

(1951) 05 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 291/C of 1950

Gulzari Lal

APPELLANT

Vs

The Swadeshi Mills Ltd., Bombay

RESPONDENT

Date of Decision : 11-05-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110

Citation : AIR 1952 P&H 379

Hon'ble Judges : Savinder Singh Sodhi, J;Kapur, J

Bench : Division Bench

Advocate : Bhagwat Dyal and A.N. Grover, for the Appellant; M.L. Puri and S.L. Puri, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This judgment will dispose of two applications. Civil Miscellaneous No. 291C of 1950 and 292C of 1950, for leave to appeal to the Supreme Court against two judgments and decrees of my learned brother Soni, J., and myself.

2. Civil Miscellaneous No. 291C of 1950 is directed against our judgment in Regular First Appeal No. 411 of 1940. which was an appeal by the Swadeshi Mills Ltd. of Bombay against Gopal Rai Gulzari Mal of Delhi and was with regard to a claim for the recovery of Rs. 5,115/2/3 which had been decreed in favour of Firm Gopal Rai Gulzari Mal against the Swadeshi Mills Limited of Bombay and which decree was reversed by the decree passed in this Court. Civil Miscellaneous No. 202C of 1950 is against our judgment in Regular First Appeal No. 412 of 1946. Tata Mills Limited of Bombay v. Gopal Rai Gulzari Mal of Delhi in Which the amount involved was Rs. 9,827/9/3 and the decree passed in favour of the firm by the Subordinate Judge was reversed on appeal in this Court.

3. The points involved in both the applications are the same and therefore they are being disposed of by one judgment. It is submitted by the learned counsel for the petitioner that the petitioner firm, Gopal Rai Gulzari Mal, have got some

cases pending in the Subordinate Judge's Court and if we add the amounts involved in those cases to the amounts involved in the present applications the subject-matter of appeal will be more than Rs. 10,000/- and he, therefore, submits that as the judgments of this Court are judgments of variance he is, u/s 110 of the Code of Civil Procedure, entitled, as a matter of right, to go in appeal to the Supreme Court, because the decree indirectly involves claim or question to or respecting property of more than Rs. 10,000/-. With this submission, I am unable to agree. According to Section 110, Civil Procedure Code, before the Constitution a person could go, as a matter of right, in appeal to the Federal Court if the subject-matter of the suit in the Court of the first instance was Rs. 10,000/- or over and the amount of the subject-matter in dispute on appeal was also the same. In the present cases, there is no doubt that the subject-matter of suit was in the one suit about Rs. 5000/- and in the other about Rs. 9,800/-. So, the first condition is not fulfilled even if the petitioner is entitled to rely on Section 110, Civil Procedure Code, as it was before the coming into operation of the Constitution.

4. Counsel for the petitioner relied, however, on the second clause of Section 110, Civil Procedure Code, and that is that indirectly the decree involves claim to a sum of Rs. 10,000/- or over, and he contended that because the result of this suit will affect his claim in other suits, therefore, the matter falls within the second clause of Section 110, Civil Procedure Code. I am unable to agree with this submission. In "*Udoychand v. P. E. Guzdar and Co.*", 52 Cat 650 (PC), there was a dispute as to a contract for sale of goods. Arbitrators awarded to the petitioner Rs. 81,000/- and Rs. 3,900/- to the respondents. The award in favour of the petitioner was set aside. He brought a suit to set aside the award in favour of the respondents also. The Appeal Court made a decree dismissing the suit and refused to give a certificate u/s 110, Civil Procedure Code, and also held that the case was not a fit one for appeal to His Majesty-in-Council. The petitioner prayed for special leave to appeal and he contended that he had a right of appeal u/s 110, Civil Procedure Code, since if the appeal succeeded he could proceed with the suit in which he was claiming Rs. 81,000/- as damages and which had been stayed. Their Lordships held that the plaintiff's claim upon the contract was too remote to be considered as being "property" indirectly involved within the meaning of this section. It was observed by Lord Dunedin at p. 654, that

"their Lordships are not inclined to attempt any precise definition of the word "property". The CPC has not done so, and any definition might not be found in the future precisely to fit the circumstances which the kaleidoscope of actual experience may produce. But they think that the present is not a case where the issue of this suit can be said directly or indirectly to involve other property."

Sir Dinshah Mulla in his CPC at p. 397 has put the matter in the following words :

"In "*Udoychand v. P. E. Guzdar & Co.*", a case already cited, in which it was claimed that the setting aside of an award would result in the appellants being able to proceed with a suit for the recovery of damages in excess of Rs. 10,000/-

the Judicial Committee said: "Their Lordships think that this is not really consequential on the present decree and too remote to be entitled to the description of being property indirectly involved in the issue of this suit". It follows that the indirect relation must not be too remote;....."

In my opinion, these cases do not fall within the phrase "indirectly" as used in the second clause of Section 110 of the Code of Civil Procedure.

5. Counsel next submits that these are fit cases for appeal to the Supreme Court as they fall within Section 109(c) of the Code of Civil Procedure. With this contention also I am unable to agree. That section has been the subject-matter of many decisions and it has been held that even if there is a substantial question of law arising between the parties it is not sufficient for the purposes of Clause (c) of this section: see "Banarsi Parshad v. Kashi Krishna Narain" 28 IA 11 (PC) at p. 13 and "Iqbal Bahadur v. Ram Sree" 56 All 277.

6. The mere existence of a substantial question of law is not sufficient to give to the High Court jurisdiction to give leave to appeal under Clause (c) of this section; the question must also be of great public or private importance: see Mulla's CPC p. 391. There is no doubt that the question is not of any great public- importance. The question is whether it falls under the second phrase of private importance. In the judgment of Lord Hob house referred to above, Banarsi Parshad v. Kashi Krishna Narain 28 IA 11 (PC) at p. 13 by "private importance" is meant private importance to both parties to the litigation and not only to one of them. Whether it is of importance to the petitioner or not it cannot be said that the question is of very great importance to the respondents. In my opinion, these petitions do not fall within Section 109(C) of the CPC either.

7. It may here be pointed out that in the appeal against which Civil Miscellaneous No. 291C of 1950 is directed, this Court found on a question of fact that note No. 2 in the Textile Commissioner's order of the 31st of October 1943, does not apply to the 15 bales (which were in dispute) which were to be delivered in July and the maximum prices mentioned in the order of the Textile Commissioner therefore did not apply to these 15 bales. It was further held by this Court that there was a contract to make delivery in July to which the Textile Commissioner's order does not apply. After giving this finding, the question was further discussed whether the word "dealer" also included the word "manufacturer". The judgment of this Court therefore proceeded not merely on the interpretation of a section but also on facts as to whether delivery was to be made before or after July.

8. In regard to the appeal which is dealt with in Civil Miscellaneous No. 292C of 1950, again the case was primarily decided on its peculiar facts. At page 6 of the judgment my learned brother Soni, J., said that as the price was fixed in December 1943 the section would not be applicable and no refund was allowable. Here again the question of a manufacturer not being included in the word "dealer" was subsequently discussed. This case also therefore was decided on

the peculiar facts of this case and no question of law really arose. In my opinion, the petitions do not fall u/s 109(c) or second clause of Section 110 of the CPC and are therefore dismissed with costs.

Soni, J.

9. I agree.