

(2013) 02 BOM CK 0125

In the Bombay High Court

Case No : Letters Patent Appeal Stamp No. 2716 of 2013 in Civil Application No. 789 of 2012 in Civil Revision Application No. 167 of 2004

Hardikar"s New Shorthand and Typewriting Institute
(Hardikar Classes)

APPELLANT

Vs

Smt. Pramila Narhari Paranjape and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 100A, 104, 104(2), 115
Constitution of India, 1950 — Article 136

Citation : (2013) 4 ALLMR 91 : (2013) 4 BomCR 736 : (2013) 2 MhLj 644

Hon'ble Judges : Mohit S. Shah, C.J.;Anoop V. Mohta, J

Bench : Division Bench

Advocate : A.V. Anturkar instructed by Sugand B. Deshmukh, for the Appellant;
Chandana Salgaonkar, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, C.J.—This appeal is directed against the order dated 20 November 2012 passed by the learned Single Judge in Civil Revision Application u/s 115 of the CPC 1908. By the said order the learned Single Judge clarified the judgment dated 21 September 2010 in Civil Revision Application to the effect that by the judgment and order dated 7 August 2004 of the Court of Small Causes, Pune were set aside and the application of the applicants in the Civil Revision Application (original defendants in the suit) under Order VII Rule 11 of the C.P.C. stood allowed and the plaint in Special Civil Suit No. 44 of 2003 which was filed by the present appellant stood rejected. The learned Single Judge further clarified that further proceedings in Special Civil Suit No. 44 of 2003 came to an end. Ms. Chandana Salgaonkar for respondent No. 7 raised preliminary objection against maintainability of the Letters Patent Appeal.

2. We have accordingly heard the learned counsel for the parties on the question of maintainability of the Letters Patent Appeal.

3. Mr. Anturkar, learned counsel for the appellant submits that when the Court of Small Causes, Pune passed the order dated 7 August 2004 rejecting the defendants application under Order VII Rule 11 of the Code of Civil Procedure, it was only an order and not a decree. It was only when the learned Single Judge passed the impugned order allowing the application under Order VII Rule 11 of the C.P.C., and the plaint in the appellant's suit came to be rejected that decree can be said to have been passed and, therefore, the appellant must have a right of filing at least one appeal against the decree passed by the learned single Judge.

4. Mr. Anturkar has further submitted that the appeal is filed under Clause 15 of the Letters Patent which does not bar an appeal against a decree made in the exercise of revisional jurisdiction, but only bars an appeal against an order made in the exercise of revisional jurisdiction. It is submitted that the Author of the Letters Patent was conscious of the distinction between judgment, order and decree as three different words have been used in Clause 15 of the Letters Patent. Since an appeal is barred only against an order made in the exercise of revisional jurisdiction, the present appeal is not barred because the present appeal is filed against the decree passed by the learned Single Judge.

5. It is further submitted that Section 115 of the C.P.C., does not provide that no appeal shall lie against an order passed in a Revision Application u/s 115 of the Code of Civil Procedure, unlike the provisions of Section 104(2) which specifically provide that no appeal shall lie from an order passed in appeal u/s 104 read with Order 41 of C.P.C. or unlike Section 100A which provides that no appeal shall lie from an original or appellate decree passed by Single Judge of a High Court.

6. On the other hand Ms. Chandana Salgaonkar learned counsel for respondent No. 7 has submitted that the provisions of Clause 15 of the Letters Patent are very clear and it was never intended that after a Single Judge of the High Court exercises revisional jurisdiction, an appeal would lie before a Division Bench against a decision rendered in the exercise of revisional jurisdiction, whether it is called order, decree or judgment.

7. We find considerable substance in the submission made by the learned counsel for respondent No. 7 and we uphold the preliminary objection.

8. As is well settled, a party to a suit has no inherent right to file an appeal against the decision by which he is aggrieved. Appeal is a creature of the statute. In *Jamshed N. Guzdar Vs. State of Maharashtra and Others*, , the Supreme Court has observed as under:-

86. Merely because an appeal is not provided in any statute, that by itself does not render a statute constitutionally invalid. It is well settled that the right of appeal is to be provided by a statute. In other words, right of appeal is statutory and not a constitutional right. This apart, if a statute does not provide an appeal in respect of certain matter, the party still will have remedy in approaching the High Court or this Court, as the case may be, in exercise of power of judicial

review including under Article 136 of the Constitution.

9. When the order was passed by the Court of Small Causes, Pune on 7 August 2004 rejecting the respondents-defendants' application under Order 7 Rule 11 of C.P.C. the order did not finally dispose of the suit obviously because the application under Order VII Rule 11 was rejected. However, if the trial Court itself had allowed the said application it would have finally disposed of the suit. The proviso to sub-section (1) of Section 115 as amended by the CPC (Amendment) Act 1999 with effect from 1 July 2002 makes it clear that a revision would lie against an order passed in a suit or other proceedings only if the order is such that if it had been made in favour of the party applying for revision, it would have finally disposed of the suit or other proceedings. The Legislature was, therefore, conscious of a situation like the present one where the trial Court by rejecting the application under Order VII Rule 11 continued the suit and the power has been conferred upon the High Court in the exercise of its revisional jurisdiction, the power "to make such order in the case as it thinks fit", which would necessarily include making an order which finally disposes of the suit. The Legislature, therefore, contemplated that a decree could be passed in exercise of the revisional jurisdiction u/s 115 of the Code of Civil Procedure. In other words, the words "the High Court may make such order in the case as it thinks fit" would include passing a decree in the suit which would finally dispose of the suit. An order on an application under Order VII Rule 11 rejecting the plaint would have the same consequence. In other words the Legislature clearly intended that the word "order" in Section 115(1) would include a decree.

10. The word "order" in Clause 15 of the Letters Patent must also, therefore, bear the same interpretation. Hence the bar against an appeal before a Division Bench "against an order made in the exercise of revisional jurisdiction" would also mean and include bar of an appeal to the Division Bench "against a decree made in the exercise of revisional jurisdiction."

11. The argument of the learned counsel for the appellant that looking to the distinction between the word "decree" and "order" in section 2 of the C.P.C., the word "order" in Clause 15 of Letters Patent should not be interpreted to include the word "decree" does not commend to us. The scheme of Clause 15 of the Letters Patent read with the CPC is that judgment passed by a Single Judge of the High Court in the exercise of Appellate jurisdiction against the decree or order of a subordinate Court is not subject to further appeal. The same rational would apply to a bar against an appeal before a Division Bench against an order made by the learned Single Judge in the exercise of the revisional jurisdiction which is also against an order of a subordinate Court.

12. The Legislature must be deemed to be aware that Clause 15 of the Letters Patent barring an intra Court appeal against an order passed by/Single Judge of High Court has never been interpreted as not barring such appeal against a decree passed by a Single Judge in exercise of revisional jurisdiction.

Accepting the appellant's contention would militate against the legislative intent as reflected in the amendment to the proviso to sub-clause (1) of Section 115 of C.P.C., by which the Legislature has substantially curtailed even the category of revisable orders.

13. The legislative scheme for abolition/barring of intra Court appeals from judgments/orders of a Single Judge of the High Court before a Division Bench of the High Court may, for convenience, be set out in the following chart:-

14. In *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, the Supreme Court has explained the nature of revisional jurisdiction and has held as under:

... Such a right was one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below....

Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense.

15. In view of the above settled legal position, the bar on appeal before a Division Bench against the decision of a learned Single Judge of this Court would apply with the same rigour, whether it is a decree or an order passed by a learned Single Judge in exercise of appellate or revisional jurisdiction of the High Court.

16. We are, therefore, clearly of the view that this appeal is not maintainable under Clause 15 of the Letters Patent. The Letters Patent Appeal is accordingly dismissed as not maintainable.