

(1984) 08 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : C.M.P. No. 1203 of 1984 in F.A.O. No. 110 of 1984

Himachal Road Transport Corporation Shimla

APPELLANT

Vs

Sushila Devi and Others

RESPONDENT

Date of Decision : 23-08-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1(3), Order 41 Rule 3(1A), Order 41 Rule 5(3), Order 41 Rule 5(5)
Contempt of Courts Act, 1971 — Section 2
Motor Vehicles Act, 1939 — Section 110D

Citation : (1986) ACJ 1125 : AIR 1986 HP 78 : (1984) 13 ILR HP 882

Hon'ble Judges : P.D. Desai, C.J.;V.P. Gupta, J

Bench : Division Bench

Advocate : D.K. Dhanna, Inder Singh and Kapil Dev Sood, for the Appellant;

Judgement

P.D. Desai, C.J.—The case has been listed before us today because the appellant has failed to comply with the following order made in C.M.P. No. 1203 of 1984 :-

"The appellant-applicant will deposit the awarded amount together with costs and interest in the Registry of this Court within a period of four weeks from today after deducting from such amount, the amount paid under the Passenger Insurance Scheme as well as the amount, if any, paid by way of interim relief by the appellant-applicant to the claimants (respondents).

This order is not to be treated as a precedent for any purpose whatsoever.

In view of the order of deposit made as aforesaid, the execution of the award against the appellant-applicant is stayed.

To be listed for admission after the deposit is made."

2. The appeal arises out of an award made by the Motor Accident Claims Tribunal, Mandi, Kullu, and Lahaul and Spitti Districts, in a claim petition lodged u/s 110-A of the Motor Vehicles Act, 1939. Under the impugned award, respondents Nos. 1 and 2 have been awarded compensation in the sum of Rs.

1,09,000-64 paise with interest at the rate of 6 per cent per annum from the date of the award till the deposit of the awarded amount in the office of the Tribunal. The appeal was instituted on June 29, 1984. CMP No. 1203 of 1984, being an application for stay, was also instituted on the same day. The aforesaid order was made on the stay application after the registration of the appeal but before the appeal was taken up for preliminary hearing. The appeal is still pending preliminary hearing because the deposit is not made.

3. Mr. D. K. Khanna, learned counsel appearing on behalf of the appellant, while applying for extension of time by four weeks for making the deposit as ordered, submitted that the decisions in *Narinder Kumar v. Mani Devi* ILR (1981) H P 423 , and *Himachal Road Transport Corporation Vs. Smt. Gurdev Kaur and Others*, on the basis of which the aforesaid order was made, require to be reconsidered and addressed arguments in support of the plea.

Mr. Inder Singh and Mr. Kapil Dev Sood appeared as interveners and supported the submissions made by Mr. Khanna. Having heard the learned counsel, we are of the view that for the reasons set out hereunder the decisions require reconsideration.

4 Order 41 of the Code of Civil Procedure, 1908 deals with appeals from original decrees. Rule 1 of Order 41, which deals with the form of appeal, the content of the memorandum of appeal and its accompaniments, is material for the present purposes and it reads as follows : --

"1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded :

"Provided that where two or more suits have been tried together and a common judgment has been delivered therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit."

5. Rule 5 of Order 41, which deals with the stay of proceedings and of execution, inter alia, by the Appellate Court is set out hereunder to the extent relevant:

"5.(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation.

XXX XXX (2) XXX XXX (3) No order for stay of execution shall be made under Sub-rule (1) or Sub-rule (2) unless the Court making it is satisfied --

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) XXX XXX (5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree."

6. Sub-rule (3) of Rule 1 and Sub-rule (5) of Rule 5 are both inserted by Section 87 of the CPC (Amendment) Act, 1976 on and with effect from February 1, 1977. In order to appreciate the true meaning and content of these provisions and the interaction, if any, between the two, it would be necessary to refer to the legislative history.

7. Bill No. 27 of 1974, being a Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963, was introduced in the Lok Sabha on April 8, 1974. The text of the Bill is found published in the Gazette of India (Extraordinary) dated April 8, 1974, in Part-II, Section 2 at pages 203 to 293.

8. The statement of objects and reasons accompanying the Bill recites in para 5 at page 295 that after carefully considering the recommendations made by the Law Commission in its Twenty-seventh, Fortieth, Fifty-fourth and Fifty-fifth Repots, the Government had decided to bring forward the said Bill for the amendment of the Code of Civil Procedure, 1908, keeping in view among others, the following basic considerations, namely : --

(i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

9. Clause 90 of the Bill provided for the amendment of Order 41. In Rule 1 of Order 41, after Sub-rule (2), Sub-rule (3) in the following terms was sought to be introduced :

"(3) Where the appeal is against an order made in execution of a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit." (Underlining supplied)

In addition, the following provision was sought to be introduced by way of amendment as Sub-rule (1A), after Sub-rule (1), in Rule 3 of Order 41 :

"(1A) Where the appellant fails to make the deposit or furnish security specified in Sub-rule (3) of Rule 1, the Court shall reject the memorandum of appeal."

Sub-rule (5) of Rule 5 of Order 41, as now enacted did not find place in the Bill, in the same or any other form.

10. The Notes on clauses annexed to the Bill point out at page 336 that Rule 1 of Order 41 was being amended by introduction of Sub- rule (3) to provide for the deposit or the furnishing of security for decretal amount by judgment-debtor when the appeal is against an order made in execution of a money decree. As regards amendment of Rule 3 of Order 41 by insertion of Sub-rule (1A), it was mentioned that the provision was meant to provide that where the appellant fails to make the deposit of the decretal amount or to furnish security specified in Sub-rule (3) of Rule 1, the memorandum of appeal shall be rejected.

11. After the Bill was introduced in Lok Sabha on April 8, 1974, the motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha on May 2, 1974 and it was adopted. The Rajya Sabha concurred in the said motion on May 14, 1974. The Joint Committee constituted accordingly submitted its Report to Lok Sabha on April 1, 1976. The Report is found published at pages 804/3 to 804/34 in the Gazette of India (Extraordinary) Part-II. Section-2, dated April 1, 1976. At page 804/21, the Joint Committee offered its observations in paragraph 65 of the Report with regard to Clause 87 (Original clause 90) of the Bill. The relevant portion from paragraph 65 of the Report of the Joint Committee is extracted hereinbelow :

"65. Clause 87 (Original Clause 90).-

(i) The Committee note that under the proposed new Sub-rule (1 A) of Rule 3 in Order XLI, if the appellant fails either to deposit the amount disputed in the appeal or to furnish security for such amount, the memorandum of appeal shall be rejected. The Committee feel that such a provision will deprive a judgment-debtor having a good case, to pursue the appeal on account of his inability to deposit the disputed amount or to furnish security for such amount.

The Committee are, therefore, of the opinion that in order to see that justice is done to both the parties, the proposed sub-rule might be amended in such a way

that neither the judgment-debtor, is deprived of his right to pursue the appeal nor the decree-holder is deprived of the remedy. Proposed Sub-rule (1A) has been amended to provide that stay of execution of the decree will not be granted unless the deposit is made or security is furnished and has been transposed as Sub-rule (5) of Rule 5.

XXX XXX ."

Be it stated that the Committee made no specific recommendation in regard to Sub-rule (3) of Rule 1 of Order 41 proposed to be inserted by original clause 90 of the Bill. In other words, the Committee recommended no change in the form or content of Sub-rule (3) which was proposed to be inserted by way of amendment in Rule 1 of Order 41. However, the Bill reported by the Committee incorporated a material change in the said sub-rule which will be persently noticed.

12. The CPC (Amendment) Bill, 1974 (Bill No. 27-B of 1974) as reported by the Joint Committee is found published in the Gazette of India (Extraordinary), Part-II, Section-2, dated April 1, 1976 at pages 804/35 to 804. At page 804/111, clause 87 finds place and the relevant portions of the said clause are reproduced hereinbelow :

"87. In the First Schedule, in Order XLI, -(i) Rule 1,-

(a) xxx xxx (b) after Sub-rule (2), the following sub-rules shall be inserted, namely : --

"(3) Where the appeal is against a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may" think fit."

(ii) xxx xxx (iii) in Rule 5,--

(a) xxx xxx (b) xxx xxx

"(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) of Rule 1, the Court shall not make an order staying the execution of the decree."

(Underlining supplied)

13. The Bill having been considered and passed by both the Houses of Parliament was enacted into the CPC (Amendment) Act, 1976 (No. 104 of 1976). The Act received the assent of the President of India on September 9, 1976 and it was published in the Gazette of India (Extraordinary), Part-II, Section-1, dated September 10, 1976. The material amendments, namely, the insertion of Sub-rule (3) in Rule 1 and Sub-rule (5) in Rule 5 of Order 41 were duly enacted and stood inserted in the Code of Civil Procedure, 1908 by Section 87 of the

Amendment Act, which is to be found at page 1337 of the Gazette, and they came into force on and with effect from February 1, 1977.

14. The substance of the Legislative history set out hereinabove is that Clause 90 of Bill No. 27 of 1974 stood materially altered as per clause 87 of Bill No. 27-B of 1974, as reported by the Joint Committee, in the following respects :

(1) In Sub-rule (3) of Rule 1 of Order 41, the provision relating to the requirement of the appellant depositing the amount disputed in the appeal or furnishing such security in respect thereof as the Court may think fit in cases where the appeal is against an order made in execution of a decree for payment of money was substituted by the provision requiring such deposit being made or security being furnished where the appeal is against a decree for payment of money.

(2) Sub-rule (1-A) of Rule 3 of Order 41 requiring the Court to reject the memorandum of appeal where the appellant fails to make the deposit or furnish security specified in Sub-rule (3) of Rule 1 of Order 41, was deleted.

(3) Sub-rule (5) was added in Rule 5 of Order 41 providing that where the appellant fails to make the deposit or to furnish the security, the Court shall not make an order staying the execution of the decree.

(Underlining supplied)

These changes are also found reflected in the CPC (Amendment) Act, 1978 and they now find place in the parent Act, namely, the Code of Civil Procedure, 1908.

15. In Narinder Kumar's case (ILR (1981) H P 423) (supra), V. D. Misra, C. J., sitting singly, had an occasion to construe Sub-rule (3) of Rule 1 of Order 41. The appellant in that case (owner of the vehicle) had been ordered by the Motor Accident Claims Tribunal to pay compensation separately to two claimants, each one of whom had filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939. Two separate appeals were preferred u/s 110-D of the said Act against the said two awards. When the appeals came on for preliminary hearing before the learned Chief Justice, he found that along with the memoranda of appeal the appellant had not deposited the amounts in question. The appellant was, therefore, directed to deposit the amounts within a period of one month in terms of Sub-rule (3) of Rule 1 of Order 41. When the appeals thereafter came on for preliminary hearing once again, an application was moved in each case on behalf of the appellant requesting that he may be permitted to furnish security instead of depositing the amount. The request was rejected as it was found to be a mere device to disobey the previous orders requiring deposit being made. The time for making the deposit was, however, suitably extended. When the appeals next reached preliminary hearing, the counsel for the appellant was unable to state whether the amounts had been actually deposited. Under the circumstances, the preliminary hearing was further adjourned. Ultimately, the Court was informed that the appellant was unable to deposit the amounts. The learned Chief Justice

observed that the appellant was a "clever person" who wanted to deprive the claimants of the fruits of the award and proceeded to address himself to the question as to the true scope and effect of Sub-rule (3) of Rule 1 of Order 41 and made the following observations at page 426 :

"The sub-rule is imperative. It is the bounden duty of the appellant to deposit the amount and carry out orders of the court. It is not left to the appellant to disobey the orders passed under this sub-rule and to claim that his appeal should be heard and decided."

The submission made on behalf, of the appellant that his failure to carry out the order would not entitle the Court to reject the appeal because mere inability to pay or deposit the amount cannot result in the deprivation of the right of appeal was rejected with the following observations at page 427 :

"Now the right of appeal which has been conferred by Order 41 is not an unfettered right. Various conditions have been imposed by this Order. For example, let us look at Rule 10. This Rule gives a discretion to the Appellate Court to demand from the appellant security for the costs of the appeal or of the original suit or of both..... The consequences of the appellant not obeying the orders of the Court to give the security for costs, have been given in Sub-rule (2) of Rule 10 which reads :

"(2) Where such security is not furnished within such time as the Court orders, the court shall reject the appeal."

In other words, it is the duty of the court to reject the appeal."

The attention of the Court was drawn to Sub-rule (5) of Rule 5 and it was urged that the only consequence of the appellant not obeying the order of the Court to deposit the decretals amount or to give security would be that the Court shall not make an order staying the execution of the decree. This submission was rejected in the following words at pages 427-428:

"In my opinion, this Sub-rule (5) has no relevance to the question with which I am concerned. Rule 5 relates to stay of proceedings and of executions. It lays down the circumstances under which the execution of a decree may be stayed.....

Now, this provision has been inserted in order to ensure that where an appellant fails to obey the order made under Sub-rule (3) of Rule 1, the Court does not stay the execution of the decree irrespective of the other sub-rules of Rule 5." "

The learned Chief Justice then proceeded to make the following further observations at page 428 :

"I would add that the question whether an appellant should deposit the amount of the decree or furnish such security in respect thereof, has been left to the discretion of the Court. It is presumed that the court, after looking into the circumstances of each case, will order whether the appellant should be directed

to deposit the amount or be permitted to furnish the security only. This was a sufficient guarantee that justice would be done to the appellant. But if the appellant refused to comply with the provisions of Sub-rule (3) the result is that there is no proper appeal before the Court. Only that appeal can be said to be a proper appeal before the Court which complies with the provisions of Rule 1..... In the circumstances of the present case I am constrained to hold that the failure of the appellant to deposit the amount within the time allowed by the court has resulted into no proper appeal being before this Court."

(Underlining supplied)

Having noted the relevant contents of the Report of the Joint Committee to which the attention of the Court was drawn, the learned Chief Justice proceeded to make the following observations at page 429 :

"In any view of the matter, the court has not been empowered to reject any memorandum of appeal under Rule 3 where the appellant refused to comply with Rule 1(3). And I do not propose rejecting the memorandum of appeal. I have come to the conclusion that there is no proper appeal before me. Under the circumstances, I have no option but to direct that the cases be consigned to the record room."

16. The ratio of the decision is :

(i) that the right of appeal conferred by Order 41 is not unfettered and that its exercise is subject to various conditions;

(ii) that the provisions of Sub-rule (3) of Rule 1 are mandatory and that they cast a duty on the appellant to deposit the amount in dispute in the appeal, unless the Court, in the exercise of its discretion, relieves the appellant from such duty after looking into the circumstances of the case and directs him to furnish security;

(iii) that if the appellant disobeys the orders passed by the Court and thereby refuses to comply with the provisions of Sub-rule (3) of Rule 1, the appeal before the Court could not be regarded as a proper appeal;

(iv) that though the Court has not been empowered to reject such appeal, since there is no proper appeal before the Court, the Court has no option in such cases, but to direct that the case be consigned to the record room; and

(v) that the provisions of Sub-rule (5) of Rule 5 have no relevance in this context since they only prohibit the Court from granting stay against the execution of the decree under appeal, in case of non-compliance of the provisions of Sub-rule (3) of Rule 1 or any order passed thereunder.

17. In Himachal Road Transport Corporation Vs. Smt. Gurdev Kaur and Others, the same question again arose before V. D. Misra, C. J., sitting singly, in an appeal against an award made by the Motor Accident Claims Tribunal. The appellant had not deposited the awarded amount because no specific direction

was given in that regard by the Court in terms of Sub-rule (3) of Rule 1. The following pertinent observations made at page 99 require reproduction :

"It appears to me that there is a misunderstanding about the ambit of Sub-rule (3). This sub-rule finds a place in Rule 1 which relates to the form of appeal and what is to accompany the memorandum of appeal. In other words, the appellant is required to comply with the full provisions of Rule 1 before there can be said to be proper appeal before the appellate court. Sub-rule (3), in my opinion, requires the appellant to deposit the money in question before or at least along with the filing of the appeal. It is only when the money has not been so deposited that permission can be had from the court to deposit the money within the time allowed by the court or to furnish the security as the court may think proper..... It is stated by Mr. Khanna that if this is the ambit of Sub-rule (3), then the very purpose of filing the appeal is frustrated. I am afraid, it is not so. Under Sub-rule (2) of Order 45 (sic) the trial court itself can stay the execution of the decree for sufficient reason. In these circumstances, I would expect of the appellants that they would deposit the amount in question in the cases arising but of motor accidents before coming to this Court in appeal since the trial court can take care of the interests of the appellant in respect of the payment of the amount to the claimants....."

(Underlining supplied)

Consequently the appellant was directed to deposit the amount in question within a specified period.

18. In the above decision, the view earlier taken in Narinder Kumar's case ILR (1981) H P 423) (supra), was reiterated and the reason why the appeal under such circumstances cannot be regarded as a proper appeal was elaborated. The ratio of the decision is that under Sub-rule (3) of Rule 1, the appellant is ordinarily required to deposit the decretal amount in the trial court before the appeal is presented or, at least, along with the filing of the appeal in the Appellate Court. When, however, the decretal amount is not accordingly deposited, permission could be had from the Appellate Court to deposit the money or to furnish the security within the time allowed by the Court. If no deposit is made or security is accordingly furnished within the time limit fixed by the Court, the appeal cannot be considered as a proper appeal and it must be consigned to the record room.

19. M/s. D. K. Khanna, Inder Singh and Kapil Dev Sood have strenuously contended that the view taken in Narinder Kumar (ILR (1981) H P 423) and Himachal Road Transport Corporation Vs. Smt. Gurdev Kaur and Others, as to the true meaning and purport of Sub-rule (3) is not correct and that the provision has been interpreted without ascertainment of the true legislative intent as disclosed by the legislative history. Emphasis was laid in this connection on the fact that consequent upon the Report of the Joint Committee, Sub-rule (1A) of Rule 3 of Order 41, which provided the consequence of the rejection of

the memorandum of appeal where the appellant fails to make the deposit or furnish the security specified in Sub-rule (3) was deleted and that while recommending the deletion of the said clause, the Joint Committee had made specific observations that such a provision would deprive the judgment-debtor having a good case to pursue his appeal if he was unable to make deposit or to furnish security. The insertion of Sub-rule (5) of Rule 5 was also heavily relied upon to urge that the only consequence of the non-compliance of the requirement of Sub-rule (3) of Rule 1 can be the denial of the prayer of stay of execution. The submission was that the view taken in *Narinder Kumar and Shrimati Gurdev Kaur (supra)* that the provisions of Sub-rule (3) of Rule 1 are mandatory and that the failure of the appellant to deposit the decretal amount before or at least along with the filing of the appeal or non-compliance on his part of the order of the Court to deposit the money or to furnish security within the time allowed by the Court would render the appeal liable to be treated as not a proper appeal and, therefore, liable to be consigned to the record room, in substance and reality, brings about the same result as rejection of the appeal. Such an interpretation, it was urged, which is opposed to the reason, purpose and spirit of the law and fails to take into account what has preceded the enactment as well as the scheme of the statute as a whole in all its material parts, must be eschewed. Reliance was placed in support of these submissions on the decisions of Punjab and Haryana High Court in *Pehlad v. Dalel Singh (1978) 80 P LR 125*, of the Delhi High Court in *Union Bank of India and Another Vs. Jagan Natb Radhey Shyam and Co. and Another*, of the Andhra Pradesh High Court in *J. Lakshmikantham Vs. Uppala Rajamma and Others*, and *State of Andhra Pradesh v. Mahmud Hasan Khan Maharaj Kumar AIR 1983 A P 277* and of the Bombay High Court in *Prabhakar Deshmukh Vs. Vinayakrao Kaushal*,

20. The ratio of the decisions relied on by the interveners may be conveniently ascertained at this stage. In *Pehlad's* case, it was held that Sub-rule (3) of Rule 1 was introduced for the benefit of holders of money decree, the execution whereof is more cumbersome than that of other types of decrees. The sub-rule, however, does not appear to be mandatory because the consequence of the appeal being dismissed, in case of non-compliance with an order to make deposit or furnish security, is not provided. In *Union Bank of India's* case, the legislative history was traced and it was held that the recommendation made in the report of the Joint Committee and the consequential omission of the proposed Sub-rule (1-A) of Rule 3 clearly showed that the intention of Parliament was not to make the deposit of the decretal amount or the furnishing of the security before the filing of the appeal against money decree as a condition precedent for valid presentation of the appeal. On a combined reading of Sub-rule (3) of Rule 1 and Sub-rule (5) of Rule 5, all that can be said is that so long as the decretal amount is not deposited or security is not furnished, the Court shall not make an order staying the execution of the decree. In *Lakshmikantham's* case, it was held that though Sub-rule (3) of Rule 1 appeared to be mandatory, because of the use therein of the word "shall", no consequential provision having been enacted to

meet with the situation arising out of the appellant's failure to deposit the amount or furnish the security, it was inferentially required to be presumed that the legislature did not intend to penalise, in cases where the said provision was not complied with. The word "shall" was, therefore, required to be read as "may". The decree-holder was nevertheless protected because of the provision of Sub-rule (5) of Rule 5, which saved the decree being stultified or the decree-holder being deprived of his right to execute the same in the event of non-compliance of the provision of Sub-rule (3) of Rule 1. The making of deposit of the decretal amount or the furnishing of the security before the filing of the appeal against a money decree is, therefore, not a condition precedent either for the valid presentation of the appeal or for its final adjudication. The decision in Union Bank of India's case was referred to and relied upon in support of the aforesaid view. In Mahmud Hasan Khan's case, it was held that it was not a condition precedent for the maintenance of an application for stay of the execution of a money decree that the decretal amount should be deposited or security must be tendered. On a conjoint reading of Sub-rule (3) of Rule 1 and Sub-rule (5) of Rule 5, the compliance of either of those two conditions was not mandatory and, therefore, an application for stay is maintainable even without making the deposit or without tendering security. While granting the stay order, however, regard must be had to the fact whether money was deposited or sufficient security was tendered and, in the context of the fact situation in each case, the court may pass orders as it may think fit. In Prabhakar's case, once again the legislative history was traced and it was held that the upshot was that Parliament never intended that a person who intends to prefer an appeal against a money decree has, as of necessity, to comply with the provision of Sub-rule (3) of Rule 1 as a condition precedent for the maintainability of the appeal. However, it is open to the Appellate Court to pass an order under Sub-rule (3) of Rule 1, ordering payment of the decretal amount, if it is called upon and if it thinks necessary to do so, otherwise than as a condition precedent for the maintainability of the appeal.

21. Now, while construing the provisions of Sub-rule (3) of Rule (1) in juxtaposition with Sub-rule (5) of Rule 5 of Order 41, it must be remembered that the basic purpose underlying all canons of construction is the ascertainment with reasonable certainty of the true intention of Parliament in enacting the legislation. Legislation is enacted to achieve a certain object. The object may be to remedy a mischief or to create some rights, obligations or impose duties. If the basic purpose underlying construction of a legislation to ascertain the real intention of Parliament, the aids which Parliament availed of such as, report of a special committee preceding the enactment, existing state of law, the environment necessitating enactment of the legislation and the object sought to be achieved are useful to deciphering the real intention of the Parliament and, therefore, access to them cannot be denied to the court. The reports of the committee which preceded the enactment of a legislation, reports of Joint Parliamentary Committee, report of a Commission set up for collecting

information leading to the enactment are, therefore, permissible external aids to construction. [See R.S. Nayak Vs. A.R. Antulay, Against the aforesaid background, we proceed to interpret the relevant provisions.

22. Sub-rule (3) finds place in Rule 1 of Order 41. Order 41 deals with appeals from original decrees. Rule 1 deals with the form of appeal, its accompaniments and contents of the memorandum of appeal. The operation of the sub-rule is confined to an appeal directed against a decree for payment of money. The appellant in such an appeal is thereunder required to deposit the amount in dispute in the appeal, or to furnish such security in respect thereof as the Court may think fit, within such time as the Appellate Court may allow. The Court is, however, invested with a discretionary power thereunder in respect of two matters; first, to determine whether the appellant should be directed to deposit the amount disputed in the appeal or to furnish security in respect thereof and, secondly, to fix the time within which the deposit should be made or the security should be furnished, as the case may be. It may be noted that there is no express power conferred on the Court to relieve the appellant from the obligation of either depositing the amount disputed in the appeal or furnishing security, as the case may be even in extreme cases. Whether or not such power inheres in or is conferred by necessary implication on the Court, is a matter which will be considered a little later. For the present, attention may be confined to the express terminology of the provision and its apparent content and effect and the procedure which is required to be followed in order to comply with the same.

23. Having regard to the fact that the provision finds place in the Order governing appeals and in the rules which deal with the form of appeal and its accompaniments, the requirement with regard to the making of deposit or furnishing of security must be regarded as a procedural requirement regulating the exercise of the right of appeal. The procedural requirement can be complied with in any of the following ways :

(i) The amount proposed to be disputed in the appeal may be deposited in the trial Court before the preferment of the appeal and the document evidencing such deposit may be annexed to the memorandum of appeal; or

(ii) The amount may be deposited in the Appellate Court at the time of the presentation of the memorandum of appeal.

In case, however, the appellant is unable to adopt either of the above courses, he may present an application to the Appellate Court along with the memorandum of appeal praying that he may be permitted to deposit the disputed amount at a later date or to furnish such security in respect thereof within such time as the Court may think fit. The application must set out good and sufficient grounds in support of the prayer. Such an application will be required to be listed for orders before the Court prior to the entertainment of the appeal, that is, before the appeal is listed for preliminary hearing on is admitted for final hearing, if no preliminary hearing precedes. A notice of the application

will have to issue to the decree-holder to enable him to show cause why the application should not be granted. As pointed out in Narinder Kumar's case (ILR (1981) H P 423) (supra), after taking into consideration the circumstances of each case in light of the facts brought on record, the Court will have to order whether the appellant should be directed to deposit the disputed amount or to furnish such security in respect thereof as the Court may think fit and also fix the time limit within which the order should be complied with. If the appellant is unable to comply with the order within the prescribed time limit, he may apply to the Court for extension of the time limit in which event the Court will have to pass appropriate orders after hearing the parties. If and when the order is ultimately complied with, the appeal will be ripe for entertainment, that is, it will be listed for preliminary hearing or admitted for final hearing if no preliminary hearing precedes depending upon the merits of the case.

24. The next question is as to what is the consequence of the negligence or failure, if any, on the part of the appellant to comply with the order of the Court made under Sub-rule (3) of Rule 1 of Order 41. There is no express provision in Sub-rule (3) prescribing any consequence, much less the consequence of nullification of the right of appeal in the event of non-compliance of an order made thereunder. Can such a consequence be regarded as arising by necessary implication from the language of Sub-rule (3)? In order to answer this question, it is necessary to ascertain the real intention of the Legislature by not only carefully attending to the language of the enactment and the whole scope of the statute but also by taking into consideration the legislative history. True it is that Sub-rule (3) of Rule 1 uses word "shall" and thereby appears to enjoin upon the appellant the duty or impose upon him the obligation to deposit the amount or to furnish security, if so directed by the Court. However, the breach of such duty or obligation cannot be regarded as resulting in nullification of the right of appeal for two apparent reasons; first, an express provision requiring the Court to reject the memorandum of appeal where the appellant fails to make the deposit or furnish security, which was sought to be introduced by way of amendment as Sub-rule (1A) of Rule 3 of Order 41, was deleted on the recommendation of the Joint Committee and, secondly, the law expressly enacts some other consequence by providing in Sub-rule 151 of Rule 5 of Order 41 that if he fails to make the deposit or furnish the security, notwithstanding anything contained in the foregoing provisions of the said rule, the Court shall not make an order staying the execution of the decree. Under the circumstances, it is not possible to hold that, in the event of non-compliance of an order made under Sub-rule (3) of Rule 1, the right of appeal itself would stand forfeited and that the memorandum of appeal would, therefore, be liable to be rejected on that ground. The consequence of a direction that the appeal be consigned to the record room on the ground that there is no proper appeal before the Court under such circumstances is, in substance and reality, not different than that which flows out of the rejection of an appeal and, therefore, even such a direction cannot obviously be given for such non-compliance under the relevant provision. This is

the view which appears to us to be in consonance with the real intention of the Legislature underlying the enactment of Sub-rule (3) of Rule 1 of Order 41. Under the circumstances, we concur in the similar opinion expressed in the decisions of some of the other High Courts, which were cited by M/s. D. K. Khanna. Inder Singh and K. D. Sood, and hold that if there is non-compliance of an order made under Sub-rule (3) of Rule 1 of Order 41, the Court has no power to reject the memorandum of appeal or to direct that the appeal be consigned to the record room under the relevant provisions of the Code of Civil Procedure. The cases of Narinder Kumar (ILR 1981) HP 423) and Himachal Road Transport Corporation Vs. Smt. Gurdev Kaur and Others, with respect, must be regarded as having been wrongly decided in so far as they hold that the consequence of non-compliance of an order made under Sub-rule (3) of Rule 1 of Order 41 is to render the appeal as not being in a proper form as required by the CPC and that, therefore, such appeal could be ordered to be consigned to the record room.

25. The question which still survives for consideration is whether the Court is entirely helpless in a situation where the appellant defies with impunity an order made by the Court as aforesaid, under Sub-rule (3) of Rule 1 of Order 41, and whether such an appellant can ask the Court as of right, under all circumstances and in all situations, to deal with his appeal on merits. In other words, the question is whether the Court in such a case is entirely helpless and has no power to enforce the order? We do not think such a view can or ought to be taken. If the Court is satisfied on the facts and in the circumstances of the case that the disobedience to the order is wilful the appellant will be guilty of civil contempt within the meaning of the Contempt of Courts Act, 1971 and he will be liable to be dealt with under the provisions of the said Act. Besides, such wilful disobedience being to an order made in exercise of a procedural law, the Rule that the party in contempt may not be heard till he has purged himself of the contempt comes into operation. It is settled law that where a party disobeys an order of the Court, in order to secure obedience to that order, the right of the party to be heard in a proceeding arising out of the same cause will be denied to him, if his disobedience is such that, so long as it continues it impedes the course of justice in the cause and there is no other effective means of securing its compliance (See : Om Parkash v. Board of School Education. ILR (1974) H P 693 : (AIR 1975 H P 57) (FB). Of course, the bar to hearing in such cases until the impediment is removed is placed under discretionary powers of the Court on considerations of public policy and it may be justifiably applied only on the proof of wilful disobedience and not otherwise.

26. The matter which next remains to be considered is whether the Court has the power to relieve the appellant from the obligation of either depositing the amount disputed in the appeal or furnishing security, as the case may be, in extreme cases. The foregoing discussion would indicate that the provisions of Sub-rule (3) of Rule 1 of Order 41 cannot be regarded as mandatory notwithstanding the use of the word "shall". The legislative history, the nature and design of the statute, the purposeful absence in the enactment of a provision

which visits its non-compliance with the penalty of nullification of the right of appeal, the impact of a cognate provision which forbids stay being granted in the event of such non-compliance etc. are all factors pointing in the direction of the provision being not mandatory as has been held by the other High Courts in the decisions cited before us. It is one thing to hold, however, that Sub-rule (3) of Rule 1 is directory and quite a different thing to view it as conferring discretion on the Court to altogether dispense with the requirement of depositing the amount or furnishing security. A provision giving a discretionary power leaves the donee of the power free to use or not to use it at his discretion. A directory provision, however, gives no discretionary power to do or not to do the things directed. A directory provision is intended to be obeyed but failure to obey does not render a thing duly done in disobedience of it a nullity (See : Rani Drig Raj Kuer Vs. Raja Sri Amar Krishna Narain Singh, Merely because Sub-rule (3) of Rule 1 is regarded as directory, it would not be right to conclude, therefore, that it confers discretion on the Court to dispense altogether with its requirement, even in a case where a justifiable ground to relieve the appellant from the obligation may appear to exist. The only discretion which is conferred on the Court under the enactment embraces a limited field; the Court may, in its discretion, direct that the appellant should deposit the amount, even if it be by instalments, or furnish security, and in either case, it may fix a reasonable time-limit for compliance of the direction. There is no warrant to enlarge this discretion into one which enables the Court to dispense altogether with the requirement of making the deposit or furnishing the security. The plain words of the enactment do not permit such a view being taken. Indeed, to do so, would defeat the legislative intent which was to ensure that the law should, to the extent possible, help in ensuring a fair deal to an unsuccessful litigant by conferring and protecting the right of appeal but the same time, provide a quick redress to a successful litigant so that he can realise the fruits of the decree. It cannot be overlooked, in this connection, that the Judicial Committee of the Privy Council was constrained to observe as far back as 1872 that the difficulty of a litigant in India commences when he obtains a decree. The execution of a money decree is known to be more cumbersome than that of other types of decrees. In order to obviate this difficulty, the legislature has made a provision in sub-rule(3) of Rule 1 for depositing the amount or furnishing the security, as the case may be, and in Sub-rule (5) of Rule 5 that the failure to make the deposit or furnish the security as ordered would result in no order of stay of the execution of the decree under appeal being made. In our opinion, therefore- the Court has no discretion of dispensing altogether with the requirement of depositing the amount disputed in appeal or furnishing security in respect thereof.

27. It now remains to deal with the submission of Mr. D. K. Khanna that the provisions of Sub-rule (3) of Rule 1 of Order 41 cannot be invoked in aid in an appeal preferred u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as "the M. V. Act"). The submission was that : (a) the exercise of the right of appeal conferred by the M. V. Act cannot be regulated by the provisions of the

CPC except to the extent these provisions are made expressly applicable and that since the provisions of Order 41 are not made applicable to an appeal preferred u/s 110-D, the requirement of depositing the amount disputed in the appeal or furnishing security in respect thereof cannot be made applicable to such an appeal and (b) even on the plain terms of Sub-rule (3) of Rule 1, the said provision would not be applicable to an appeal u/s 110-D because such an appeal lies against an "award" and not against "a decree for payment of money". We are unable to accede to this submission because the question is no longer open to doubt or debate. In H.P. Road Transport Corporation Vs. Pt. Jai Ram and etc. etc., this Court has taken the view that the provisions of Order 41 Rule 22 of the CPC conferring upon the respondent the right to take any cross-objection to the decree under appeal, which he could have taken by way of an appeal, are applicable also to an appeal preferred u/s 110-D of the M. V. Act. The decision proceeds on the footing that where a legal right is in dispute and the regular Courts of the country are seized of such dispute, such Courts are governed by the ordinary rules of procedure applicable thereto, notwithstanding that the legal right claimed arises under a special statute. On the aforesaid basis, it was there held that the High Court being seized of the appellate jurisdiction conferred by Section 110-D, it has to exercise that jurisdiction in the same manner in which it exercises its other appellate jurisdiction and that, therefore, the respondents in such appeals are entitled to prefer cross-objections. The other objection, namely, that the appeal is against an "award" and not a "decree" is also answered in Jai Ram's case by pointing out that the procedure contemplated for the Motor Accident Claims Tribunal in trying the claim cases is very much akin to the procedure followed by ordinary Courts and that the award given by the Tribunal in such cases finally determines the rights of the parties and that for the purposes of the applicability of the procedural provisions, the award must be regarded as a decree. In view of this decision, it is too late in the day to contend that to an appeal preferred u/s 110-D to this Court, the ordinary rules of procedure governing its appellate jurisdiction would not apply.

28. Having regard to the view taken by us as aforesaid. Mr. D. K. Khanna makes an oral request on behalf of the appellant to extend by four weeks the time for making the deposit. The request is granted.