
(2002) 03 MP CK 0039
In the Madhya Pradesh High Court
Case No : L.P.A. No. 196 of 2002

Kamla Bajpai and Others

APPELLANT

Vs

Smt. Sharda Devi Bajpai and Others

RESPONDENT

Date of Decision : 27-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 19, 100

Citation : AIR 2002 MP 262 : (2003) ILR (MP) 127 : (2002) 5 MPHT 71 : (2002) 3 MPLJ 600

Hon'ble Judges : Bhawani Singh, C.J;K.K. Lahoti, J

Bench : Division Bench

Advocate : Maninder Bhatti, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.

This appeal is directed against order dated 6-4-2002 in MC.C. No. 514/2000 passed by the learned single Judge rejecting the application filed by the appellants under Order 41, Rule 19, Code of Civil procedure, 1908 and Section 5 of Limitation Act, 1963 for readmission of second appeal dismissed in default of appearance.

Short facts of the case are that the appellants filed Second Appeal No. 417/1996, u/s 100. CPC in this Court. It was listed for hearing on 28-7-1997 but was dismissed for want of prosecution as appellants and their counsel failed to appear on that date. Thereafter, on May 30, 2000, appellants filed an application under Order 41, Rule 19, C.P.C. for readmission of the appeal dismissed In default on 28-7-1997. Though specific provision has not been mentioned in the application, but it is Order 41. Rule 19, CPC which is precisely invoked for readmission of appeal dismissed In default of appearance. Along with the application, appellants also filed an application u/s 5 of the Limitation Act as the application was barred by time for two years and 277 days. The learned single Judge vise impugned

order dated 6-4-2002 dismissed the application u/s 5 of the Limitation Act and consequently, the application under Order 41, Rule 19, C.P.C. was also dismissed. Aggrieved by the order of the learned single Judge, present appeal has been filed invoking Clause 10 of the Letters Patent,

Counsel for the appellants submits that the present appeal is maintainable under Clause 10 of the Letters Patent Appeal as the application under Order 41, Rule 19, C.P.C. was dismissed by the learned single Judge as barred by time. In the circumstances, present appeal is maintainable. The question of maintainability of the appeal has been considered by Full Bench of this Court in *Seema Mitra v. Smt. Lotika Mitra* 1995 Jab LJ 375 : (AIR 1975 M P 128), it has been held in para 10 that :--

10. Where the matter arises in relation to the disposal of second appeal preferred u/s 100. CPC Section 100A imposes a total ban against further appeal from the second appellate judgment of the single Judge. The provision contains non obstante clause in relation to any Letters Patent for any High Court or any other instrument having the force of law or in any other law for the time being in force. Thus, the bar against a Letters Patent Appeal against a second appellate judgment is total and final.

Finally, the Court held in para 14 that ;

The order dismissing the application for restoration of the review application may affect the rights of the parties, or at any rate, the rights of the applicants and In that view, is capable of being regarded as a judgment. That by itself is not sufficient to render the order appealable. The impact on Clause 10 of the Letters Patent or Section 100A and Order 47. Rule 7(1) also requires examination. The effect of Section 100A is to deny remedy by way of appeal against the judgment disposing of a second appeal. The effect of Order 47. Rule 7(1) would deny a right of appeal to an applicant whose application for reviewing the second appellate judgment is dismissed. If against a main order itself, no appeal could be filed, It cannot be said that an appeal would lie against a subsequent order which also seeks merely to upset the original judgment. What a litigant cannot secure directly cannot be permitted to be secured indirectly. We are inclined to agree with the view taken in *Bhanu Prakash Agrawal Vs. Roop Chand and Another*, The decision of the Supreme Court in *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, , relied on by the appellant does not militate against the view taken by us. With respect, we are unable to agree with the view taken by the Andhra Pradesh High Court in *Sattemma's case*, AIR 1964 Andh Pra 162 (FB). The view taken by us is fully consistent with the principles laid down by the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, . We, therefore, hold that the LPA is not maintainable. It is accordingly dismissed but without costs."

The learned single Judge decided the applications under Order 41, Rule 19, C.P.C. and u/s 5 of the Limitation Act in respect of an order passed in Second

appeal. The aforesaid applications were decided by the learned single Judge while exercising the second appellate jurisdiction. In the circumstances, while the Court exercising jurisdiction even in interlocutory matter or any other application disposed of after disposal of the case, the jurisdiction remains the same. The order passed in Second Appeal is not appealable under Clause 10 of the Letters Patent. In the circumstances, when a final order is not appealable, under Letters Patent then any other application dealt with or decided after the decision of the second appeal. Letters Patent Appeal is not maintain- able against such an order. In the circumstances, present appeal is not maintainable and is dismissed.