
(1976) 05 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : L.P.A. (Writ) No. 1 of 1976

Karam Singh

APPELLANT

Vs

State of J. and K. and Others

RESPONDENT

Date of Decision : 12-05-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 43 Rule 1, 104

Citation : AIR 1977 J&K 29

Hon'ble Judges : Mufti, J; Adarsh Sein Anand, J

Bench : Division Bench

Advocate : T.S. Thakur, for the Appellant;

Judgement

Mufti, J.—This is a letters patent appeal directed against the order of a learned single Judge of this Court, Mr. Mian Jalal-ud-Din J., allowing

the application of one, Mahesh Dass Sethi, to be impleaded as a party to a writ petition.

2. At the preliminary hearing for admission, the question arose whether the order is appealable under clause 12 of our Letters Patent. The learned

Counsel for the petitioner contended that it was and placed reliance on the decisions of this Court reported as AIR 1962 J & K 47, AIR 1965

J&K 118, AIR 1969 J&K 52 and The J. and K. Co-operative Bank Vs. Shams-ud-din Bacha, . Of these the decision reported as AIR 1969

J&K 52 alone deals with the question before us.

3. Clause 12 of the Letters Patent reads thus:

And we do further ordain that an appeal shall lie to the said High Court of Judicature from the judgment (not being a judgment passed in the

exercise of appellate jurisdiction in respect of a decree or order made in the

exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of super-intendence) of one Judge of the said High Court or one Judge of any Division Court and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, consistently with the provisions of Civil Procedure Code, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but the right of appeal from other judgments of the judges of the said High Court or of such Division court shall be to Us. Our Heirs or Successors and be heard by Our Board of Judicial Advisers for report to us.

4. In our opinion an order of a learned Single Judge would amount to judgment under this clause if it finally determines some claim or right of the aggrieved party irrespective of the fact whether such order is made in the main cause or suit or in proceedings incidental or ancillary thereto. The same principle was stated by this Court to AIR 1969 J&K 52 on a consideration of the various authorities, in these words:

On a careful consideration of the aforesaid authorities, we think that the tests laid down by the Nagpur and Bombay High Courts in the aforesaid rulings are sound and should serve as useful guides for determining the right of appeal under Clause 12 of our Letters Patent. Respectfully agreeing with and following the enunciation of law in those rulings, we find that the order, in the instant case, though it does not finally dispose of the suit pro tanto determines the rights of the parties and amounts to a judgments is contemplated by Clause 12 of the Letters Patent.

In particular, it was held therein as under:

The legal position that emerges, therefore, is that orders of the character specified in Section 104 and Order 43, Rule 1, Civil P.C. excepting clause (JJ) thereof, would be construed as judgments and an appeal against any one of such orders would lie to the.... Division Bench of the High Court notwithstanding the fact that it is passed by one of the Judges of the High

Court sitting on the original side.

5. In the present case the petitioners had a right to oppose and defeat the claim of Mahesh Dass Sethi for being impleaded as a party to the writ

petition. The order of the learned Single Judge operates to determine that right against them. But the determination is not final against them in the

sense that if the decision in the main writ petition turns against them, they will have a right to challenge the decision also on the ground that the order

of the learned single Judge impleading Mahesh Dass Sethi as a party was improper, In this view the order does not finally determine the right of the

petitioners to oppose and defeat the claim of Mahesh Dass Sethi to be impleaded as a party. Therefore, on the general principle mentioned above,

it does not amount to judgment under Clause 12 of the Letters Patent and no appeal can lie against it. The position could not be same if the

application of Mahesh Dass Sethi had been rejected. In that case the appeal could be competent at his instance, because once his application was

rejected, he could not re-agitate the matter and press his claim at any subsequent stage of the writ petition. The learned Counsel could not perhaps

appreciate this distinction inasmuch as it was argued by him that appeals have been admitted by this Court where the application for impleading a

person as a party to a suit or cause was rejected.

6. The impugned order does not also fall within the category of orders contemplated in the decision as amounting to judgment. Because the order

is analogous to one made under Order 1, Rule 10 C.P.C. which is not appealable under the Code of Civil Procedure. Viewed from this angle too

the order is not appealable.

7. In these circumstances the present appeal is not competent and is hereby dismissed in limine.