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**(1993) 04 KAR CK 0030**  
**In the Karnataka High Court**  
**Case No : O.S.A. No's. 7 and 13 of 1992**

M. Manohar and another

APPELLANT

Vs

T.R. Mills Pvt. Ltd. and others

RESPONDENT

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**Date of Decision :** 07-04-1993

**Acts Referred:**

Companies Act, 1956 — Section 397, 398, 483

**Citation :** (1996) 86 CompCas 570 : (1993) ILR (Kar) 1382 : (1992) 3 KarLJ 399

**Hon'ble Judges :** R.V. Raveendran, J;K. Shivashankar Bhat, J

**Bench :** Division Bench

**Advocate :** Udaya Holla, for the Appellant; Kumar, for the Respondent

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## Judgement

K. Shivashankar Bhat

1. The first appellant before us sought to refer to the notes of inspection available with him while deposing, regarding the contents of the several documents of which he had taken inspection. Those documents were not available for being produced in the court, in a proceeding u/s 397 and 398 of the Companies Act, 1956 ("the Act", for short). The learned company judge did not permit the appellant to refer to the notes made by the first appellant. This disallowance is challenged in Appeal O.S.A. No. 7 of 1992. Earlier the appellants had sought to produce those notes as evidence in their case. The learned company judge held that the notes were not true copies of the documents and, therefore, these notes cannot be availed of to prove the contents of the originals. O.S.A. 13 of 1992 is against the said order. The appeals are u/s 483 of the Companies Act, 1956. When the appeals came up for admission we pointed out that the orders under appeal are only orders made on procedure matters and the right of the parties are not affected by those orders and consequently the appeals may not be maintainable. Elaborate arguments were addressed by learned counsel for the appellants and the respondents on this aspect.

2. The question before us is, therefore, whether these appeals are maintainable.

3. u/s 483, appeals lie from "any order made or decision given in the matter of winding up of a company". The contention of the appellant is that, this creates a wide and broad appellate jurisdiction, and every kind of judicial order could be challenged in appeal.

4. In *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, , a similar provision under the earlier Companies Act, 1913, came up for consideration. The learned company judge has confirmed a sale of assets held by the official liquidator; this order was reversed by the Division Bench in an appeal u/s 202 of the old act. An order confirming the sale was held to be an appealable order by the Supreme Court. The process of confirming a sale involves the exercise of discretion and it was a judicial order and hence held to be appealable. This reasoning is adopted by Mr. Udaya Holla, to contend that an order refusing to admit a document in evidence or an order disallowing a party to refresh himself by referring to the notes available with him, while giving evidence, is a discretionary order, which is also a judicial order and hence an appeal lies immediately from that order.

5. At page 511, the Supreme Court observed (35 Comp Cas 8) :

"One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has some times been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. No doubt, it would not be possible to describe an order passed deciding a lis before the authority, that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial. Even viewed from this narrow standpoint it is possible to hold that there was a lis before the company judge which he decided by passing the order."

6. The Supreme Court affirmed the decision of Chagla C.J. in *Bachharaj Factories Ltd. Vs. Hirjee Mills Ltd.*, , as to the applicability of clause 15 of the Letters Patent and to what extent it would control the appeal u/s 202 of the Indian Companies Act, 1913. It is in this context of the Letter Patent, the Bombay High Court decision was approved, wherein it was held that an order of adjournment u/s 170 (now section 443) was appealable and only the procedural aspects of the appeal, were governed by the Letters Patent. To appreciate the decision of the Bombay High Court, it is necessary to note that an order of adjournment under the old section 170 itself is an order on the merits of a winding up petition and would affect the rights of the petitioner immediately. It is not a mere procedural matter and it cannot be equated to an order adjourning a case in the exercise of the court's ordinary jurisdiction; an order u/s 170 (now section 443) is statutory order. In *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, ,

the Supreme Court, while referring to the decision of Chagla C.J., said that such an order or decision referred in old section 202 itself indicates that the order or decisions was not merely procedural in character but one which affected the rights of parties. At page 514, the Supreme Court held at (at page 13 of 35 Comp Cas) :

"We also agree with the learned judges of the Bombay High Court that the words "order or decision" occurring in the first part of section 202, though wide, would exclude merely procedural order or those which do not affect the rights or liabilities of parties."

7. Therefore, it is quite clear that the order or decision referred to in the present section 483, though wide, would exclude merely procedural order or those which do not affect the rights or liabilities of parties.

8. The question, therefore, is whether the orders under appeal before us are orders which are merely procedural orders and whether they affect the right of the parties.

9. In Central Bank of India Vs. Shri Gokal Chand, the Supreme Court was concerned with section 38 of the Delhi Rent Control Act, which provided for an appeal from every order of the Controller. The Supreme Court held that the phrase "every order" is not so as to included interlocutory order which are merely procedural and had not affected the rights or liabilities of the parties. At page 800, it was observed thus :

"The object of section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under sections 36 and 37, such as orders regarding the summoning of witness, discovery, production and inspection of documents, issue of a commission for examination of witness, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceedings; they regulate the procedure only and do not affect any right or liability of the parties. The Legislature could not have intended that the parties would be harassed with endless expenses and delay by appeal from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even in interlocutory order passed u/s 37(2) is an order passed under the Act and is subject to appeal u/s 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set

aside an ex parte order is subject to appeal to the Rent Control Tribunal."

10. The Supreme Court referred to its earlier decision in Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, referred to already by us above. In Central Bank of India Vs. Shri Gokal Chand, , it was pointed out that orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question are all interlocutory orders and are steps taken towards final adjudication and they regulate the procedure only; they do not affect any right or liability of the parties. In fact if any of those orders materially affect the right and liabilities by virtue of the ultimate order of the court, the validity of those interlocutory order could be challenged later in the appeal against the final order. The observation of the Supreme Court in Central Bank of India Vs. Shri Gokal Chand, , would equally govern the relevant words used in section 483 of the Companies Act, in fact Central Bank of India Vs. Shri Gokal Chand, , refers to the earlier Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, Mr. Udaya Holla relied on a Bench decision of this court in Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. C. Srinivasa Raju, and it was contended that the appellant's right to adduce evidence is adversely affected in the instant case and, therefore, the appeals are maintainable. The Division Bench observed thus :

"Thus, it is clear that an interlocutory order in a suit or proceeding can be held to be a "case decided" if by such an order there is an adjudication for the purpose of the suit or proceeding of some right or obligation of the parties thereto in controversy but not every order passed in the course of a suit or proceeding irrespective of the fact whether it decided some right or obligation of the parties in controversy. In the course of a suit or proceeding, several orders are passed by the court trying a suit or proceeding. Every such order cannot be held to decide some right or obligation of the parties. However, there are several order passed during the course of a suit or proceeding affecting the rights and obligations of the parties to the suit or proceeding. Such rights may be substantive rights or procedural rights. Order 26 of the Civil Procedure Code, 1908, deals with commissions. It is open to a party to adduce evidence to prove the case pleaded by it or defence set up by it, as the case may be, by adducing oral and or documentary evidence directly before the Court. Certain evidence can properly be adduced by local investigation conducted by a commission. Even the oral evidence in some cases, a party or a witness is entitled to have the same recorded through a commission. Order 26 of the Civil Procedure Code, 1908, itself provides for issuing commissions to examine witnesses and for local investigations for scientific investigation, performance of ministerial act and sale of movable property and to examine accounts, to make partition etc. Thus, Order 26 of the Civil Procedure Code, 1908, gives a right to a party to the suit to have a commission issued for the aforesaid purpose. If the party seeking appointment of a commission satisfies the conditions laid down in Order 26 of the Civil Procedure Code, 1908, he is entitled to have the commission appointed for the

purposes mentioned in Order 26 of the CPC 1908. If the court below rejects the request for appointment of a commission is a case where the requirements for appointment of a commission are satisfied, undoubtedly, such an order would affect the right of a party to the suit to adduce evidence. If a witness is entitled to be examined on commission and the court refuses to issue a commission to record the evidence of a witness, not only the right of a party's suit is affected, the right of a witness to be examined on commission is affected."

11. The above observations may be compared with the observations of the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, and theoretically it is difficult to reconcile the observation of the Bench of this court with those of the Supreme Court. However, it is unnecessary for us to go into the said aspect because the observations of this court quoted above could be distinguished for the present on the ground that the Division Bench of this court has concerned with the scope of section 115 of the Code of Civil Procedure.

12. In *Bant Singh Gill Vs. Shanti Devi and Others*, again the relevant provision of the Delhi Rent Control Act came up for consideration. The trial court had held in the said case that the suit had not abated. The Supreme Court held that it was an interlocutory order and cannot be considered as an appealable order immediately. Whether the suit stood abated could be considered in an appeal from the ultimate order, in case the party becomes aggrieved by the ultimate order.

13. The rights and liabilities of the parties normally would be decided by the final order. Very merely the interlocutory order would affect the rights of the parties. Mr. Holla contended that admission of an appeal is a matter of right and referred to the decision of the Supreme Court in *Shanta Genevieve Pommerat and Another Vs. Sakal Papers Private Limited and Others*, This decision is based on the Rules of the Bombay High Court. Further the Supreme Court has not stated that an appeal should be admitted even in a case where an appeal is not maintainable.

14. In *C.M. Desouza v. S.B. Billimoria* AIR 1926 Lah 246 , it was held that an order refusing an application for the inspection and copies of the statements of persons examined u/s 296 is appealable under the provisions of the Companies Act. It is unnecessary for us to consider this decision in view of the subsequent decision of the Supreme Court in *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, Several other decisions cited pertain to the concept of "case decided" u/s 115 of the Code of Civil Procedure. Hence, we do not propose to consider them. In *T.N. Habib Khan Vs. Arogya Mary Shanthi Lucien*, , it was held that an order admitting documents is appealable since it affects the right and liabilities of aggrieved party. We fail to understand as to how admitting a document would affect the rights of the party immediately and why the aggrieved person should not wait till the disposal of the matter and in case the final order goes against the party he may challenge the earlier order also while challenging the final order. With utmost respect to the learned judge, we are of

the view that the decision runs counter to the observations of the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, wherein specifically the Supreme Court held that the order regarding the admissibility of a documents is an interlocutory order and does not affect any right or liability of the parties. Mr. Holla then contended that if the interlocutory order could be challenged in the appeal filed against the final order it means that interlocutory order is also an appealable order and if so, u/s 483, the aggrieved person can challenge the said order immediately. This argument actually is an argument to overcome the observations of the Supreme Court in *Central Bank of India Vs. Shri Gokal Chand*, An interlocutory order may not ultimately affect the rights of the parties, in the sense that the final order may go in his favour. In such a situation it is immaterial as to what happened at the interlocutory stage. It is in that sense it has to be understood that the interlocutory order cannot be challenged unless it affects the rights and liabilities of the parties. A document may be wrongly admitted by the court overruling the objections the objector may be temporarily aggrieved by this order. But ultimately, it may so happen that the objector may succeed in the litigation, if so, it is entirely immaterial whether his earlier objection was upheld or overruled. No doubt an interlocutory order governing the procedural matters may sometimes create procedural difficulties to a party, but the purpose of an appeal is not to set right every procedural defect. The course of a litigation should normally proceed unhampered. If at every stage the appellate court has to entertain an appeal there cannot be a speedy culmination of the litigation at all. It is with a view to expedite the trial and conclusion of litigation before the original authority or court, the Supreme Court has limited the scope of the appellate jurisdiction in the manner stated in *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, as well as in *Central Bank of India Vs. Shri Gokal Chand*, It was also contended before us that the learned company judge was not right in rejecting the request of the appellants either to produce the notes in evidence or to refer to them to refresh the memory of the witness. We do not propose to go into these questions because these questions are most appropriately to be considered in case in occasion arises in future for the appellate Bench to entertain an appeal against the final order made in the proceedings pending before the learned company judge.

15. Consequently, we hold that these appeals are not maintainable. They are accordingly dismissed without expressing any opinion on the merits of the questions.