

(1954) 12 OHC CK 0005

In the Orissa High Court

Case No : Supreme Court Appeal No. 42 of 1954

Madan Gopal Rungta

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 01-12-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109
Constitution of India, 1950 — Article 133, 133(1)

Citation : AIR 1955 Ori 71 : (1955) 21 CLT 292

Hon'ble Judges : Panigrahi, C.J.;Narasimham, J

Bench : Division Bench

Advocate : L.K. Dasgupta and G.N. Sengupta, for the Appellant; Adv.-General, for the Respondent

Judgement

Panigrahi, C.J.—This is an application for leave to appeal to the Supreme Court, under Article 133 of the Constitution read with Section

109(a), Civil P. C. The applicant is the defendant in a suit filed by the State for possession of certain manganese mines in Keonjhar District and for

recovery of mesne profits, the suit being valued at 41 lakhs of rupees. The applicant is in possession of the mines by virtue of a lease said to have

been granted in his favour by the ex-Ruler of Keonjhar State and the lease will expire in another two years. It is alleged by the State that the lease

was annulled by a Notification under the Extra Provincial Jurisdiction Act and that the applicant has not been granted any lease by them after the

annulment. It is further alleged that the applicant has been causing damage and waste to the mines which could be prevented only by the

appointment of Receiver.

The learned Subordinate Judge, Keonjhar, before whom the suit is pending

directed the appointment of a Receiver by an exhaustive order dated 23-10-1954. This order of the Subordinate Judge was affirmed by our judgment dated 23-11-1954 in M. A. 67 of 1954, on appeal to this Court.

The defendant applies for a certificate from this Court for leave to appeal to the Supreme Court, against our judgment.

2. Learned counsel for the applicant contends that he is entitled to a certificate under Article 133(c) of the Constitution. Article 133 provides that:

(1) an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India

if the High Court certifies--

(a) that the amount or value of the subject-matter of the dispute in the Court of first instance and is still in dispute on appeal was and is not less than

twenty thousand rupees.; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court.

The Article further provides that if the judgment, decree, or final order appealed from affirms the decision of the Court immediately below in any

case other than a case referred to in Sub-clause (a) the High Court should further certify that the appeal involves some substantial question of law.

3. It may be stated at the outset that the provision in Section 109, Civil p. C. is to be read subject to Article 133 of the Constitution, even though

that Section deals with the same subject-matter.

4. The conditions requisite for the grant of certificate are: firstly that the order sought to be appealed against should be a judgment, decree or final

order in a civil proceeding of the High Court; secondly that the High Court should certify that the case is a fit one for appeal to the Supreme Court

under Sub-clause (c) of Article 133; in the other cases the subject-matter of the dispute should be valued at not less than twenty thousand rupees;

and lastly, if the final order is one of affirmation the appeal should involve some substantial question of law in the opinion of the High Court.

It is conceded before us that the propriety of the appointment of a Receiver is by no means a, substantial question of law as the principles

governing the appointment of Receivers are too well established. The question, however, is whether the appointment of a Receiver can be

characterised as a final order within the meaning of Article 133(c). The test of finality is whether the order amounts to a final adjudication of the

rights of parties, in other words whether it affects the rights of the parties finally in the suit itself. As was observed by Lord Esher, M. R. in --

"Salaman v. Warner" 1891 1 Q. B. 734 (A).

If the decision whichever way it is given will, if it stands, finally dispose of the matter in dispute, I think that for the purpose of these rules it is final.

On the other hand, if that decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other win allow the action to

go on, then I think it is not final but interlocutory.

It was similarly held in -- "Firm Ramchand Manjimal v. Goverdhandas Vishindas Ratanchand" AIR 1920 PC 86 (IB) that:

an Order is not a final order within the meaning of Section 109 of the CPC unless it finally disposes of the rights of the parties.

Again, in -- AIR 1933 58 (Privy Council) an order under Order 41, Rule 23, Civil P. C. was held not to be a final order, within the meaning of

Section 109 of that Code. Even if the order went to the root of the suit, viz., jurisdiction of the Court to entertain it, it was not held sufficient to give

finally to the Order, for, if after the Order the suit is still alive, that is to say, if the rights of the parties have still to be determined no appeal would lie

against it u/s 109(a). The order may decide an important and even a vital issue in the case, but if the suit is still alive and has to be tried"" in the

ordinary way it cannot be the subject-matter of an appeal to the Supreme Court.

The identical expression ""judgment, decree or final order"" was used in Section 205, Government of India Act and in -- AIR 1949 1 (Federal

Court) Kama J., held, on a review of the authorities that the same meaning should be attached to orders in criminal cases also, namely, that the

order must be one which finally determines the point in dispute and brings the case to an end.

In -- "Muhammad Amin Bros. Ltd. v. Dominion of India" AIR 1960 FC 77 (E) an order directing the compulsory winding up of a company was

set aside and the case was sent back to the trial Court by a Bench of the Calcutta High Court. Such an order was held to be a purely interlocutory

order which merely determined that the proceeding is triable by the Court. We have therefore no doubt that the order of this Court dated 23-11-

1954, affirming the order of the learned Subordinate Judge, Keonjhar, in appointing a Receiver was only an interlocutory order and did not affect

the merits of the case. Similarly, an order refusing the appointment of a Receiver is not a final order within the meaning of Section 109, Civil P. C.

The appointment is in the discretion of the Court and the order does not decide any cardinal point arising for decision between the parties in the

suit. Hence, leave to appeal to the Privy Council was not granted in -- Rajniti Prasad Singh and Others Vs. Nrisingha Charan, . See also" --

"Chundi Dutt v. Pudmanund Singh" 22 Cal 928 (G) and -- "Mohammed Musaji v. Ahmed Musaji" 10 Ind Cas 439 (H). But there can be no

doubt on the point after the decision of the Privy Council in -- "Benoy Krishna v. Satish Chandra AIR 1928 PC 49 (I) where Viscount Sumner

observed that as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making

interlocutory orders is one which is not a suitable subject for review by the Judicial Committee.

The following observations are particularly applicable to the facts of the present case-

Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Courts in

India than they can be to their Lordships, but the delay occasioned by taking this additional appeal adds gravely to the procrastination which is

already the bane of Indian litigation.

The Madras High Court has adopted the view taken in Rajniti Prasad Singh and Others Vs. Nrisingha Charan, and held that an order removing or

appointing a Receiver is merely an order making a provision for the due preservation of the estate during the pendency of the suit and does not

affect the rights of the parties at all. We have accordingly no hesitation in holding that the order of this Court dated 23-11-1954 is not a final order.

Nor is the case a fit one for being taken to the Supreme Court. Any certificate to that, effect will merely serve to delay the trial of the suit resulting

in considerable loss and wastage of the property in dispute.

5. We are not satisfied that there are any special circumstances in the case which would otherwise mouce us to grant a certificate. The suit is one of

the ordinary suits for possession and mesne profits and the order for

appointment of receiver is intended to preserve the estate from destruction and wastage. The mere fact that the suit is valued at Rs. 41 lakhs or that the defendant impugns the validity of the State Government's order is not a circumstance that would justify any delay in the trial of the suit pending before the Subordinate Judge. The power vested on the High Courts under Article 133(c) of the Constitution should be sparingly used to meet particularly hard cases. There may be cases where the point in dispute is not measurable in money, and yet the decision may have far-reaching results. But it is clear that there is no such point of great public or private importance.

6. We would accordingly dismiss this application with costs. Counsel's fee Rs. 100/- (Rupees one hundred only). Leave to appeal refused.

Narasimham, J.

7. I agree.