
(2004) 08 MP CK 0105

In the Madhya Pradesh High Court

Case No : L.P.A. Nos. 442, 456, 463 of 2004

Nalendra Nath Sharma and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Citation : (2004) 08 MP CK 0105

Hon'ble Judges : R.V. Raveendran, C.J.;K.K. Lahoti, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.V. Raveendran, C.J.

These three appeals involve common questions of law. Therefore, they are heard together by consent and are disposed of by this common order.

The twelve appellants in LPA No. 442 of 2004 claim that they were appointed as Bill Collectors by the Fifth respondent-District Co-operative Central Bank Limited, Rewa M.P. (for short the Bank) in the year, 1991. With effect from 1-5-1998, they were paid monthly salary after deducting Provident Fund, Group Insurance etc. They were not absorbed as regular employees in spite of continuously serving for more than 12 years. On the other hand, the Bank terminated their services by order dated 28-2-2003. Appellants filed W. P. No. 1609 of 2003 challenging the same. An interim order was granted on 31-3-2003 and 15-5-2003 directing their continuance.

The appellant in LPA No. 456 of 2004 was appointed temporarily as Bill Collector Clerk on 12-10-1999 by the Bank with regular salary with deduction of P.F., Group Insurance etc. He was served an order of termination dated 30-6-2004. The appellant filed W.P. No. 3732 of 2004 where an interim stay of the termination order dated 30-6-2004 was granted.

The three appellants in LPA No. 463 of 2004 were appointed as Clerks on

16-4-1992, 16-4-1992 and 11-3-1997 by the Bank, on daily wage basis. By order dated 26-6-2004, their services were sought to be terminated with effect from 30-6-2004 as no longer required. Appellants challenged the said order in W. P. No. 3733 of 2004 and an interim order was made on 30-6-2004 directing continuance of their service.

The respondent Bank appeared and applied for vacating stay on the grounds that the appellants were employed in connection with a contract given by the M.P. State Electricity Board for collection of electricity bills; that the Electricity Board had cancelled the said contract from 31-3-2004; that the Registrar of Co-operative Societies had also refused sanction for recruitment; that the Bank was running under loss; and, therefore, not being in a position to continue their employment, it resorted to termination of their service. The learned single Judge vide orders dated 14-7-2004, 15-7-2004 and 15-7-2004 in the respective writ petitions vacated the interim order earlier granted. Feeling aggrieved, the writ petitioners have filed these appeals.

A preliminary objection is raised by Shri R. K. Gupta, learned Senior Counsel for the Bank, about the maintainability of these Letters Patent Appeals. It is submitted that having regard to the decision of the Division Bench of this Court in *Raymond Cement Works, Bilaspur and Another Vs. State of M.P. and Others*, a Letters Patent Appeal is not maintainable against an order, passed by a single Judge in a writ proceeding; vacating an interim stay. In *Raymond Cement*, the Division Bench considered the scope of Clause 10 of the Letters Patent which provides that an appeal shall lie to the High Court from the "judgment" of a Single Judge, as detailed in that clause. As the term "judgment" was not defined in the Letters Patent, the Division Bench considered the matter with reference to the definition of "judgment" and "decree" in section 2(9) and section 2(2) of the Code of Civil Procedure. Relying on the said definitions, the Division Bench held that to be termed as "judgment", there should be an adjudication which finally and conclusively determines the rights of parties with regard to all or any of the matters in controversy. The Division Bench held that a Letters Patent Appeal would lie only in cases where there was a final adjudication of the rights of parties, or controversy involved in the matter; and as an interlocutory order granting or vacating stay does not finally decide any of the rights of parties in controversy, and the writ petition in which the interim order was passed will be pending, a Letters Patent Appeal would not be maintainable.

There is no dispute that if *Raymond Cement* is applied, these appeals are not maintainable. The appellants submitted that having regard to the law laid down by the Supreme Court in *Employer in Relation to Managment of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another*, following the earlier decision in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, it has to be held that *Raymond Cement* is no longer good law. It is contended that a Letters Patent Appeal is maintainable against an interim order of the single Judge granting or vacating an order of stay, as such an order finally determines

the question whether the impugned order should be in operation or not during the pendency of the writ petition and vitally affects the valuable rights and obligations of writ petitioners.

The Learned Counsel for the respondents replied that the Division Bench of this Court has already considered the effect of the decision of the Supreme Court in *Shah Babulal Khimji in Raymond Cement* and held that the said decision was not applicable as it related to an appeal arising from an interlocutory order in a civil suit and not an appeal arising from an interim order in a writ proceedings. In regard to *Central Mine*, it is submitted that the said decision does not lay down any proposition which has the effect of over-ruling the decision of this Court in *Raymond Cement*.

The question that therefore arises for our consideration is whether the decision of the Supreme Court in *Central Mine* has the effect of overruling the decision of this Court in *Raymond Cement*.

In *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, the Supreme Court considered whether an order allowing amendment of pleading is "Judgment" for purposes of Clause 15 of the Letters Patent of Bombay High Court and held :

If an amendment merely allows the plaintiff to state a new cause of action or to ask a new relief or to include a new ground of relief all that happens is that it is possible for the plaintiff to raise further contentions in the suit, but it is not decided whether the contentions are right. Such an amendment does nothing more than regulate the procedure applicable to the suit. It does not decide any question which touches the merits of the controversy between the parties. Where, on the other hand an amendment takes away from the defendant the defence of immunity from any liability by reason of limitation, it is a judgment within the meaning of clause 15 of the Letters Patent. The reason why it becomes a judgment is that it is a decision affecting the merits of the question between the parties by determining the right or liability based on limitation. It is the final decision as far as the trial Court is concerned. In finding out whether the order is a judgment within the meaning of Clause 15 of the Letters Patent, it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the Court. The nature of the order will have to be examined in order to ascertain whether there has been determination of the right or liability." (emphasis supplied) In *Shah Babulal, Khimji*, the Supreme Court considered the question whether an intra court appeal was available against an order of a single Judge dismissing the application for appointment of receiver in a civil suit entertained by the High Court in its original jurisdiction. In that context, the Supreme Court considered the scope, ambit and meaning of the word "judgment" appearing in Clause 15 of the Letters Patent of the Bombay High Court. After exhaustive consideration of the matter, the Supreme Court held thus :

113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a Court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of section 2 cannot be physically imported into the definition of the word "judgment" as used in CI. 15 of the Letters Patent because the Letters Patent has advisedly not used the term "order" or "decree" anywhere. The intention, therefore, of the givers of the Letters Patent was that the word "judgment" should receive a much wider and more liberal interpretation than the word "judgment" used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word "judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds :-

(1) A final judgment - A judgment which decides all the question or issues in controversy so far as the trial Judge is concerned and leaves, nothing else to be decided.....

(2) A preliminary judgment - This kind of judgment may take two forms - (a) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable..... (b) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res judicata, a manifest defect in the suit, absence of notice under section 80 and the like,.....

(3) Intermediary or interlocutory judgment - Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceedings. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.....

Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

The Supreme Court however cautioned that while applying the tests to find out the import of the word "Judgment", the following considerations must prevail with the court:

(1) That the trial Judge being a senior Court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil Justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment, otherwise the appellate Court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The Courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. " (emphasis supplied)

Clause 10 of the Letters Patent of Patna (similar to Clause 10 of Allahabad, Punjab and Madhya Pradesh) was considered by the Supreme Court in *Central Mine* (supra) with reference to an interlocutory order passed in a writ proceeding. In that case, the award of an Industrial Tribunal directing reinstatement and payment of partial backwages was challenged in a writ proceeding before the High Court of Patna. The workman claimed interim relief under section 17-B of the Industrial Disputes Act, 1947. The learned single Judge allowed the application and directed the employer to pay the workman full wages during the pendency of the writ proceedings. That was challenged in Letters Patent Appeal before the Division Bench. The Division Bench held that the Letters Patent Appeal was not maintainable as the order directing payment under section 17-B of the I.D. Act was not a judgment within the meaning of Clause 10 of the Letters Patent. While reversing the said decision, the Supreme Court analysed the scope of Clause 10 of Letters Patent and held thus:

From the above discussion, it is clear that from all judgments except those falling under the excluded categories, an appeal lies to the same High Court. The next question which needs to be considered is, what does the expression "judgment" mean? That expression is not defined in Letters Patent. It is now well settled that the definition of "judgment" in section 2(9) of the Code of Civil Procedure has no application to Letters Patent." (emphasis supplied)

After referring its earlier decision in *Shah Babulal Khimji*, the Supreme Court held that an interlocutory order passed in a writ proceeding directing payment under section 17B of Industrial Disputes Act, 1947 would fall under the category of "Intermediary or interlocutory judgment" considered in *Shah Babulal Khimji*.

Then it proceeded to lay down what is "judgment" with reference to interim or interlocutory orders passed in writ proceedings :

.....From the above discussion, it follows that to determine the question whether an interlocutory order passed by one Judge of a High Court falls within the meaning of "judgment" for purposes of Letters Patent the test is : Whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case." (emphasis supplied)

Applying the said principle, the Supreme Court held that determination of entitlement of the workman to receive the benefit under section 17-B of the I. D. Act was a "judgment" within the meaning of Clause 10 of the Letters Patent and therefore, an appeal was maintainable against the same.

The decision of Supreme Court in Central Mine has the effect of overruling the decision of this Court in Raymond Cement as it upsets both the premises on which the decision in Raymond Cement is based. While Raymond Cement applied the definition of "judgment" in section 2(9) of Code of Civil Procedure to define the term "judgment" occurring in Clause 10 of the Letters Patent, the Supreme Court clearly held that the definition of "judgment" in section 2(9) of Code of Civil Procedure has no application to Letters Patent. In Raymond Cement, this Court held that the principles laid down in Shah Babulal Khimji will not apply to decide the maintainability of Letters Patent Appeal against an interlocutory order passed by a single Judge in exercise of powers under Article 226/227 of the Constitution of India. On the other hand, the Supreme Court while dealing with a Letters Patent Appeal against the interim order passed by single Judge in exercise of writ jurisdiction, applied and followed the principles laid down in Shah Babulal Khimji in a limited manner.

But the question is, even if the decision in Raymond Cement is held to be overruled by Central Mine, whether an appeal would lie against all interlocutory orders passed in writ proceedings. The answer is obviously "no". The Supreme Court in Central Mine has categorically held that an interlocutory order passed by a single Judge would fall within the meaning of "judgment" for purposes of Letters Patent only if such interlocutory order amounts to a final determination affecting vital and valuable rights and obligations of the parties concerned. The Supreme Court has also made it clear whether the interlocutory order amounts to final determination affecting vital and valuable rights and obligations is a matter that has to be ascertained from the facts of each case.

The next question is, when an order of interim stay is granted, or when it is vacated or confirmed, whether there is a final determination of rights and obligations of the parties concerned, affecting their vital and valuable rights.

Interim order/interlocutory orders passed during the pendency of a case can conveniently be classified as follows :

- (i) Orders which finally decide any question or issue in controversy in the main case,
- (ii) Orders which finally decide an issue which materially and directly affect the final decision in the main case,
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case,
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final disposal.
- (v) Discretionary orders (like stay of the operation of the order under challenge) which may cause some inconvenience or cause some prejudice to a party temporarily, but which do not finally determine the rights and obligations of parties.

The Code of Civil Procedure defines "judgment" as an adjudication which finally and conclusively determines the rights of parties with regard to all or any of the matters in controversy. The Code of Civil Procedure provides appeals not only against "judgments" as defined therein, but also against certain orders (enumerated in Order 43, Rule 1, Civil Procedure Code) which though may not amount to an adjudication which finally and conclusively determines the rights of parties with regard to all or any of the matters in controversy, are considered to be of some importance. Various High Courts and the Supreme Court while interpreting the word "judgment" in the provision relating to appeals in the Letters Patent have taken the view that the term "judgment" occurring in the said provision of the Letters Patent will take into its fold not only the judgments as defined in section 2(9) Civil Procedure Code but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Therefore, even though Order 43, Rule 1, Civil Procedure Code may not in terms applicable to appeals under Letters Patent, the principle underlying Order 43, Rule 1, Civil Procedure Code is held to be applicable to the Letters Patent Appeals relating to orders passed in Civil Suits. As a result, interlocutory orders which fall under categories (i) to (iii) above, have been held to be "judgment" for the purpose of appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) have been held to be not "judgments" for purpose of filing appeals provided under the Letters Patent.

The several categories of interlocutory orders, which arise in regard to civil suits, do not normally arise in writ proceedings, which are summary proceedings. Rules of pleadings and evidence which play an important role in Civil Suits, may not have that relevancy in writ proceedings. Therefore, in place of the elaborate principles relating to appealability of interlocutory orders in civil suits under Letters Patent considered by Shah Babulal Khimji, the Supreme Court while

dealing with appealability of interlocutory orders in writ proceedings, abridged and narrowed down the principles in *Central Mine*, by stating that the orders involving the final determination of vital and valuable rights and obligations of parties are to be considered as "judgments". It follows that an interim order, which is made provisionally, pending disposal of the writ petition, and whose effect can be modified, altered, vacated, reversed or nullified by the final order disposing of the writ petition, cannot obviously be a "judgment" as it does not finally determine any rights and obligation of parties.

A classic example of an interlocutory order which amounts to a final determination is an order passed under section 17B of the Industrial Disputes Act, 1947 directing payment of "full wages last drawn" to a workman during the pendency of the writ petition. Such a payment being in the nature of subsistence allowance paid to the workman, irrespective of the result of the litigation, the amount paid under the said section is neither refundable nor recoverable. Thus, even if ultimately the employer succeeds in the writ petition and the order directing reinstatement is set aside, the effect of the interlocutory order under section 17B during the pendency of the writ petition remains unaffected and unaltered. Therefore, the Supreme Court in *Central Mine* held that an order under section 17B of the Industrial Disputes Act, 1947 is a "final determination affecting the vital and valuable rights and obligations of parties" and, therefore, a "judgment" appealable under Clause 10 of the Letters Patent.

On the other hand, an order granting stay or refusing stay is a discretionary order which does not finally determine any right or liability of the parties. It does not affect the merits of the lis between the parties, even though it may temporarily cause some inconvenience or prejudice to either of the parties. The effect of either grant of stay or refusal to grant stay or vacating an order of stay, gets modified, or rectified by the final order. As the grant, refusal or vacation of stay during the pendency of the writ proceeding do not involve final determination of any right or liability of the parties, such an order cannot be elevated to the status of a "judgment" for the purposes of Clause 10 of Letters Patent.

For the reasons stated above, we hold that a Letters Patent Appeal is not maintainable against an order granting or vacating an interim stay. Consequently, all the three Letters Patent Appeals are dismissed.