
(1966) 03 CAL CK 0018

In the Calcutta High Court

Case No : Letters Patent Appeal Tender No. 182 of 1966

Narendra Nath Panja

APPELLANT

Vs

Chand Mull Jiwan Mull (India) Ltd. and Another

RESPONDENT

Date of Decision : 15-03-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Citation : 70 CWN 649

Hon'ble Judges : P.B. Mukharji, J;D. Basu, J

Bench : Division Bench

Advocate : Provash Chandra Bose, for the Appellant;

Judgement

P.B. Mukharji, J.—This raises a short point of procedure and Appellate Side Rules. The point is important and interesting. The petitioner wants the Memorandum of Appeal which he had filed on 14.1.66 to be returned to him. The objection is raised by the Registrar that he cannot dispose of this application because Rule 2(10) of Part I, Chapter II of the Appellate Side Rules only gives him the power to receive and dispose of an application for the return of a "document". According to him it is doubtful whether the Memorandum of Appeal is a "document" within the meaning of that Rule. We are satisfied that this is not a document within the meaning of Rule 2(10) of Part I, Chapter II of the Appellate Side Rules. The question now is whether the filed Memorandum of Appeal can be returned. This appeal was under clause 15 of the Letters Patent and the petitioner filed the same on the 14th January, 1966. But before filing it he did not obtain leave or the declaration of the judge who passed the order that the case was a fit one for such appeal. What the petitioner then does is to state that an application for leave to appeal under clause 15 of the Letters Patent had been filed on the 5th January, 1966 and that was appended on the Memorandum of Appeal. It now appears that the application for leave under cl. 15 of the Letters Patent was rejected by the Court on the 15th February, 1966. Hence the appeal now has become incompetent and infructuous. The question now is can the

Memorandum of Appeal be returned. There is also a question of return of certified copies of the judgment and decree filed. Before dealing with the point about return of certified copies of judgment and decree we shall dispose of the main question whether the Memorandum of Appeal can be returned.

2. The relevant rule on the point is Rule 10. Pt. II, Chapter V of the Appellate Side Rules which reads follows :

10. (1) When a Memorandum of Appeal is not in proper form and/or is not accompanied by the necessary copies of papers, the Registrar may allow time within which such memorandum must be amended, and/or the necessary papers filed, or may lay the same before the Division Bench for orders.

(2) If a Memorandum of Appeal is presented for admission without copies of the judgment and decree or order appealed from, it shall forthwith be returned to the Advocate or party presenting it. If such copies are filed after the period of limitation has expired the memorandum shall be presented direct to the Division Bench. In case of an appeal from appellate decree or order, copies of the judgment and decree or order of the Court of first instance shall be filed along with the Memorandum of Appeal.

3. The question, therefore, whether in this case the memorandum of Appeal can be returned depends first on the interpretation of Rule 10, Part II, Chapter V of the Appellate Side Rules. Rule 10 as quoted above does not provide for the Memorandum of Appeal to be returned on the ground that leave under clause. 15 of the Letters Patent had not been obtained at the filing of the Memorandum of Appeal. That is not a matter of "form" under Rule 10(1) but of substance and law. The only express provision for return of Memorandum of Appeal as made in sub-rule (2) of Rule 10 quoted above is when the Memorandum of Appeal is presented for admission without copy of judgment and decree or order appealed from. But even then this applies when the Memorandum of Appeal is "presented" and not after it has not only been presented but also "filed" in Court. In other words under this Rule the Memorandum of Appeal can only be returned when it is presented for admission as specified in sub-rule (2) of Rule 10 above and not after it is filed. On that interpretation of Rule 10 therefore it is clear that the Memorandum of Appeal cannot be returned on the ground now sought in the facts of this case.

4. The only other relevant Rule on the point is Rule 3 of Chapter VIII, Part II of the Appellate Side Rules which inter alia provides as follows :

The Memorandum of Appeal shall be drawn up in accordance with the provisions of Order XLI, rule 1, Civil Procedure Code, and shall be subscribed by an Advocate of the Court. It need not be accompanied by a copy of the judgment appealed from. It shall be the duty of the officer to whom the memorandum is presented under rule 2 above to endorse thereon the date of presentation and send the same to the Stamp Reporter, who shall satisfy himself that there is a declaration by the Judge who passed the judgment that the case is a fit one for

appeal, and that it is in order and within time.

5. The whole procedure adopted by the petitioner has been erroneous in this case. He filed the documents which he was not required to file and did not file the declaration of the Judge which was necessary. In other words, he filed copy of the judgment appealed from which he need not have filed under R. 3 quoted above and he did not have the declaration by the Judge which was essential under Cl. 15 of the Letters Patent. Worse still, he induced the office to accept the appeal which was "Filed". But even then Rule 3 does not say that the Memorandum of Appeal can be returned after it has been filed. Indeed scanning this Rule 3, it is plain that it also deals with presentation stage of the appeal and not the stage after the appeal is filed and casts the duty on the Stamp Reporter to see and satisfy himself that there is a declaration by the Judge who passed the judgment that the case is a fit one for appeal.

6. The question here is not whether the Memorandum of Appeal has been rightly or wrongly filed. The fact remains that it has been filed in the records of this Court. Now this Court is a Court of record. The Memorandum of Appeal forms part of such record. It will, therefore, be inappropriate to return the Memorandum of Appeal which has once been entered on the records of this Court as having been filed. Nor can Rule 3 be read or interpreted to mean that a Memorandum of Appeal once filed rightly or wrongly can be returned.

7. I am, therefore, of opinion that the Memorandum of Appeal cannot be returned and must be kept on the records of this Court. With regard to the return of the certified copies of judgment and decree they certainly can be returned to the petitioner, and I order accordingly.

D. Basu, J.

I agree.