
(1966) 02 AHC CK 0009

In the Allahabad High Court

Case No : Supreme Court Appeal No. 53 of 1963

Raja Shatrunji

APPELLANT

Vs

Mohamed Azmat Azim Khan and Others

RESPONDENT

Date of Decision : 21-02-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109, 110
Constitution of India, 1950 — Article 133, 133(1)
Uttar Pradesh Zamindars Debt Reduction Act, 1952 — Section 4

Citation : AIR 1967 All 51

Hon'ble Judges : M.C. Desai, C.J;N.U. Beg, J;L. Prasad, J

Bench : Full Bench

Advocate : Ali Hasan, for the Appellant; S. Rahman, for the Respondent

Final Decision : Allowed

Judgement

Desai, C.J.—With great respect to my brother Beg I regret I am unable to agree with his view that it is for us to decide whether an appeal lies to the Supreme Court under Article 133 of the Constitution or not. The Article occurs in the Chapter headed as "The Union Judiciary" and deals with the jurisdiction of the Supreme Court and not with the jurisdiction of a High Court in respect of any matter. The opening words "an appeal shall lie to the Supreme Court from any judgment, decree or final order" are addressed to the Supreme Court; the Supreme Court must entertain an appeal from any judgment, decree or final order if the condition precedent mentioned in the Article, viz. the possession by the appellant of one of the four certificates mentioned in Clauses (a), (b) and (c) granted by the High Court is fulfilled. It is elementary that the question of jurisdiction is for the Court, the jurisdiction of which is invoked and not for any other court. In *Rosenblatt v. American Cyanamid Co.*, 15 LE (2nd) 39 the Supreme Court of the United States held that it was its duty to decide whether the order from which an appeal was preferred to it was a final order and the appeal was competent, even though no question of its jurisdiction was raised by the parties. Goldberg, J. said at page 42 that "although neither of the parties has

mooted the question, it goes to the jurisdiction of this Court and must be considered."

I find myself unable to agree with my learned brother that the words "any judgment, decree or final order" govern the word "certifies"; they cannot be divorced from the preceding word "from", are to be read with the words "an appeal shall lie" and cannot possibly be read with the word "certifies". What the High Court can certify is stated in the Article; it is that the amount or value of the subject-matter is of a certain amount or that the judgment, decree or final order involves some claim or question respecting property of a certain value or that the case is a fit one for appeal or that the appeal involves a substantial question of law. It is not at all required to certify that it is a judgment, decree or final order from which the appeal is sought. Even in respect of the certificate mentioned in Clause (b) the essence of it is that some claim or question respecting property of certain valuation is involved in its decision and not that its decision amounts to a judgment, decree or final order. What is to be certified is the amount of the property involved and not the decision being a judgment, decree or final order. There would have been no sense in requiring a certificate about the decision being a judgment, decree or final order under Clause (b) when it was not required under Clause (a). The distinction between the circumstances mentioned in Clauses (a) and (b) does not justify the necessity of a certificate regarding the decision being a judgment, decree or final order. In one case and not in the other. In a certificate the High Court has not to state at all that its decision is a judgment, decree or final order.

2. There is no law laid down in the Constitution or in any Act or Rules as to when a High Court can grant a certificate or cannot grant it. Of course a certificate can be granted Only if the facts to be certified exist and cannot be granted if they do not. No law supplies the answer to the question whether when the facts exist the High Court must grant the certificate or may refuse to grant for some reason. The Article may be interpreted as entrusting a High Court with the duty of granting a certificate and it may be said that if the facts exist the certificate must be issued.

Since it is a matter of a right to appeal and it cannot be denied arbitrarily the certificate must be issued if the facts exist and cannot be withheld. So regardless of the question whether there is a judgment, decree or final order or not the certificate must be issued. If a certificate under Clause (b) is issued it may contain the recital that its judgment, decree or final order "involves directly value" but it is not bound to certify that it is a judgment or is a decree or is a final order and the certificate can be that its decision "involves directly value".

3. The Supreme Court derives the jurisdiction over an appeal from Article 133 and not from the certificate issued by the High Court; the High Court cannot confer jurisdiction upon the Supreme Court simply by issuing a certificate. The existence of a certificate is nothing more than a condition precedent to the

maintainability of an appeal in the Supreme Court; no appeal lies unless there is a certificate. A High Court does not certify that the Supreme Court has jurisdiction; it certifies only the existence of certain facts and it is for the Supreme Court to decide whether an appeal lies to it or not. Whether an appeal lies to the Supreme Court or not is a question of the Supreme Court's jurisdiction and must be answered by it and cannot be answered for it by the High Court or any other court. If a High Court cannot decide whether the Supreme Court has jurisdiction over a certain appeal it means that it cannot decide that its decision is or is not a judgment, decree or final order. I have already referred to the case of *Rosenblatt* 15 Law Ed 39 in which the Supreme Court of the United States held that it is its own duty to consider whether the decision from which an appeal is preferred to it is a final order and the appeal is competent or not. Nothing to the contrary is laid down in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, . Chagla, C. J. and Bhagwati, J. decided a preliminary issue about the retrospective operation of a statute and then granted certificates under Articles 132 and 133. The Supreme Court held that "the appeal is not competent under Article 132 and the fact that a certificate has been given does not alter the position" (p. 255). This confirms that it is for the Supreme Court itself to consider whether it has jurisdiction over the appeal preferred to it or not. As both the Supreme Court and the High Court cannot have jurisdiction over the same matter it follows that the High Court has not the jurisdiction.

It was argued before the Supreme Court that the certificate was also under Article 133 and the Supreme Court observed:

"..... but under that article also, an appeal lies only against judgment, decrees or final orders, and no certificate could be granted in respect of an interlocutory finding."

The Supreme Court did not intend to lay down that a High Court has no jurisdiction to grant a certificate unless it finds that an appeal lies from its decision to the Supreme Court. It was considering its own jurisdiction and not the High Court's jurisdiction of granting a certificate. Though it used the words "no certificate could be granted" what it meant was that no appeal lay even though a certificate was granted. There is nothing in the judgment to suggest that a High Court is required to consider before granting a certificate that an appeal lies from its decision. The fact that there is no law stating in what circumstances a High Court can or ought to or cannot grant a certificate leads to the conclusion that it is not concerned with the utility of the certificate to be granted by it; it grants the certificate because without it an appeal cannot lie, the facts to be certified exist and it cannot or should not deprive the appellant of the right of appeal if he has any.

4. No appeal lies from an order of a High Court granting or refusing a certificate. Once there is a decision amounting to a judgment, decree or final order of a High Court in a civil proceeding and the High Court has given one of the certificates

there is an absolute right of appeal to the Supreme Court; the words are "an appeal shall lie". Consequently if the Supreme Court finds that the High Court's decision was a judgment, decree or final order and the appellant possesses any of the certificates it cannot refuse to entertain the appeal. It follows that it cannot go into the merits of the certificate; the certificate is binding upon it. In some cases the Supreme Court has cancelled a certificate granted by a High Court but done so without going into the question of its jurisdiction to do so. It has not discussed the matter at all and has not laid down in so many words that it has jurisdiction over the contents of a certificate.

The whole object behind the rule that an appeal lies if a certain certificate is granted by the High Court is to prevent the Supreme Court's spending its own time and labour in deciding whether leave should be granted for an appeal or not. If it had the jurisdiction to go into the merits of a certificate the object behind the provision would be defeated. If it was intended that the Supreme Court could go into the merits of a certificate no useful purpose was to be served by the High Court's granting a certificate; no useful purpose was to be served by the Supreme Court's and the High Court's going into the same matter. If the Supreme Court had jurisdiction to go into the merits of a certificate it should also have the jurisdiction to go into the merits of refusal to grant a certificate but admittedly no such jurisdiction is vested in it. It is because of this fact that there is a provision for special leave in Article 136; if a High Court refuses a certificate the prospective appellant can approach the Supreme Court for its special leave.

5. I had an occasion to deal with this matter in *Chief Inspector of Stamps Vs. Mrs. Panzy Feruandas*, and adhere to all that I said there.

6. Article 132(1) gives a right to an appeal to the Supreme Court from "any judgment, decree or final order" in any proceeding if the High Court certifies that the case involves substantial question of law as to the interpretation of the Constitution. Here also the certificate is only about there being a substantial question of law regarding the interpretation of the Constitution. Sub-Article (2) lays down that if the High Court refuses the certificate the Supreme Court may, on being satisfied that the case involves a substantial question of law as to the interpretation of the Constitution, grant special leave to appeal.

Now if the High Court had the power to refuse a certificate on the ground of the absence of such a question of law as well as on the ground that its decision is not a judgment, decree or final order, Sub-article (2) will apply even when the refusal is on the ground that the decision is not a judgment etc. and it will be open to the Supreme Court to grant special leave. This would be anomalous. It is obvious that the Supreme Court's power to grant special leave is when the decision is a judgment, decree or final order. An appeal lies only if there is a judgment, decree or final order; the sub-article is not meant to grant a further right of appeal in the absence of a judgment, decree or final order. The jurisdiction to grant special leave is not confined to the refusal of a certificate by the High Court on the ground that the case does not involve a substantial

question of law. As it is clear that special leave cannot be granted if there is no judgment, decree or final order and special leave can be granted whenever a High Court has refused a certificate it follows that the High Court cannot refuse a certificate on the ground that there is no judgment, decree or final order. What holds good in respect of a right of appeal under Article 132 holds good also in respect of a right of appeal under Article 133

7. I would, therefore, refuse to enter into the question whether this Court's decision is a judgment, decree or final order.

8. The order sought to be appealed from is reviewing the Court's earlier judgment dated 27-11-1962 and allowing amendment of a decree in accordance with the provisions of the Zamindars' Debt Reduction Act. Earlier this Court had refused to amend the decree but by the order under appeal it amended the decree by granting the review. What is challenged in the appeal is the act of reviewing the earlier order and not the amendment of the decree in accordance with the provisions of the Zamindars' Debt Reduction Act. The dispute which ended with the order under appeal was about the jurisdiction of this Court to grant the review on the ground of a subsequent change in the law with retrospective effect. It was not disputed that if the Court could review the earlier order the latter order passed by it was the correct order. The impugned order, however, is allowing amendment of the decree. The decree is for money and the effect of the amendment is to reduce the decretal amount by more than Rs. 20,000. Accordingly I agree with my learned brother that the certificate referred to in Article 133(1)(a) of the Constitution be granted to the applicant. Since the application had been seriously contested by the opposite parties the applicant should get his costs of this application.

N.U. Beg, J.

9. : This is an application by Raja Shatrungi under Article 133 of the Constitution of India read with Section 110 of the CPC praying for a certificate of fitness under Article 133(1), (a), (b) and (c) of the Constitution of India and Sections 109 and 110 of the Code of Civil Procedure. The facts which have given rise to the present application may be briefly stated as follows :--

10. The father of opposite parties Nos. 1 and 2, Sardar Mujibur Batman Khan, filed an application u/s 4 of the U. P. Encumbered Estates Act for the liquidation of his debts. In the said proceedings the predecessor of the applicant in the present case obtained a decree against Sardar Mujibur Rahman Khan u/s 14 of the U. P. Encumbered Estates Act for Rs. 1,31,040-1-0 with costs and future interest at 3 1/2 per cent on the basis of a secured debt. Sardar Mujibur Rahman Khan, the judgment-debtor, died on the 27th April, 1949.

Thereafter opposite parties Nos. 1 and 2, the sons of Sardar Mujibur Rahman Khan made an application in the Court of the Special Judge; Kheri, u/s 4 of the U. P. Zamindars' Debt Reduction Act (Act XV of 1953) for reduction of the decretal amount. This application was rejected by the Special Judge, Kheri, on

the 18th February, 1957, on the finding, inter alia, that unless and until the decree shows or indicates the property mortgaged "no reduction of debt could be ordered under the U. P. Zamindars" Debt Reduction Act (Act XV of 1953)."

11. The opposite party No. 1 filed First Appeal No. 27 of 1957 against the said order. This first appeal was eventually heard as Revision No. 157 of 1958 Faruq Ali Shah Vs. Ghansham Dass and Others, and decided by a Full Bench of this Court. The Full Bench upheld the order of the Special Judge and dismissed the said revision on the 27th November, 1962. The U. P. Zamindars" Debt Reduction Act was, however, subsequently amended by the U. P. Zamindars" Debt Reduction (Amendment) Act (Act XX of 1962). The Amendment Act No. XX of 1962 received the assent of the President on the 27th November, 1962. It was published in the Gazette on the 4th December, 1962 and came into force on that date. Thereafter the opposite party No. 1 filed Review Application No. 2 of 1963 on the 20th February 1963, against the order of the Full Bench dated the 27th of November, 1962 Mohd. Azmat Azim Khan Vs. Raja Shatrunjai and Others, . This review application was also heard by a Full Bench which, in accordance with the majority opinion, granted the review application by its order dated the 30th April Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others, Aggrieved by the said order the applicant filed the present application for a certificate of fitness under Article 133(1)(a), (b) and (e) of the Constitution of India and Sections 109 and 110 of the Code of Civil Procedure.

12. At the very outset, the learned Counsel for the opposite parties raised a preliminary objection to the effect that the order dated the 30th April, 1963, granting the review application is not a final order. Learned Counsel submitted that the said order is merely an order remanding the case to the Special judge, who will pass the final decree reducing the amount of debt under the U. P. Zamindars Debt Reduction Act.

In reply, on behalf of the applicant it was argued that the question as to whether the said order is a final order is not a matter which is to be determined by due High Court, and, in any case, the order in question is a final order within the meaning of Article 133(1) of the Constitution of India. Having considered the matter, I am of opinion that the High Court should at the time of granting the certificate, apply its mind to the question as to whether the conditions specified in the opening part of Article 133(1) of the Constitution of India are satisfied in the case before it. No doubt, the opening words of Article 138 appear to be addressed to the Supreme Court, but, they are a condition precedent to the issue of a certificate.

According to the learned Counsel for the applicant, the High Court should apply its mind only to the ingredients of Clauses (a), (b) and (c) of Article 183(1), as they are the only factors in respect of which the certificate is to be given by tie High Court. In this connection it is argued that as the conditions specified in the opening portion do not form part of the certificate granted by the High Court, they should be disregarded altogether at this stage. I find it difficult to accept

this argument. It appears to me that the words in the opening portion occupy a governing position so as to constitute conditions precedent to the grant of a certificate. If the said conditions are not fulfilled, the question of granting a certificate does not arise. It is no doubt true that the Supreme Court is not bound by the expression of the opinion of the High Court on this aspect of the matter. From mat, however, it does not follow that at the stage of the determination of the question whether the certificate should be granted or not, the High Court should shut its eyes to the question whether the conditions precedent to the grant of a certificate are satisfied in the easel before it or not.

A contrary view may lead to very absurd consequences. The High Court would not certainly grant a certificate under Article 133(1)(c) of the Constitution in a Criminal Appeal because the proceeding in respect of which the certificate is sought is not a civil proceeding but a criminal one and is, therefore, not covered by the opening portion of Article 133(1) of the Constitution of India. In fact the words "judgment, decree or final order" are explicitly mentioned in Clause (b) and the existence of a "judgment, decree or final order" is implicit in the grant of a certificate under other clauses as well. This view would also be supported by the observations of their Lordships of the Supreme Court in Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, . Dealing with the nature of a certificate under Article 133 of the Constitution of India, their Lordships remarked as follows:

"It is said that the certificate is also under Article 133, but under that article also, an appeal lies only against judgments, decrees or final orders, and no certificate could be granted in respect of an interlocutory finding."

13. The above observation would clearly indicate that in their Lordships" view it would not be open to the High Court to grant a certificate unless it was of the view that the decision against which the application under that Article is directed constitutes a judgment, decree or final order.

14. On merits, however, I am of the opinion that the order dated the 30th April Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others, , passed by the Full Bench in the review application is a final order and the preliminary objection should therefore, fail on that ground. Strictly speaking, the order dated the 30th April Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others, does not contain any express direction as to remand. The said order is reproduced below:

"By Court.

In accordance with the order of the majority this review application is granted. No order about costs."

The effect of the above order, therefore, is to grant the prayer in Review Appeal No. 2 of 1963 dated 20th February, 1963. The prayer in the said review application is as follows :--

"Wherefore it is prayed that the judgment dated 27-11-1962 be reviewed and

Revision No. 157 of 1958 be allowed with costs throughout."

Turning to the revision application, we find that the prayer in the said application is as follows:

"It is therefore prayed that the order under appeal may kindly be set aside and the amendment of decree be allowed in accordance with the provisions of Section 4 of Act XV of 1953.

15. It is, therefore, obvious that neither in the review application nor in the revision application is there any prayer for remand. The effect of the order of the Full Bench dated 30-4-1963: Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others,) being merely to allow the prayers made in the review and the revision application, no remand order can be said to be passed by the Full Bench either expressly or by implication. Technically, therefore, it is not correct to say that the order of this Court dated the 30th April, 1963(AIR 1963 AH 541) (FB), is an order of remand. There is no express direction of remand in this order nor can any such direction be incorporated in the said order by a reference to the prayers in the review or the revision application.

16. Even if the order dated the 30th April Mohammad Azamat Azim Khan Vs. Raja Shatranji and Others, , be interpreted to be an order of remand of the case to the Special Judge, I am of opinion that the said order is a final order. The sole question that was the subject-matter of contest between the parties was whether the provisions of the U. P. Zamindars' Debt Reduction Act (Act XV of 1953) would be applicable to the present case. That question having been finally decided by the High Court, the principle on which the substantive rights of the parties are to be decided has been finally determined by the High Court. On behalf of the opposite party No. 1, no counter-affidavit has been filed indicating that any other question remains to be determined.

Further, the learned Counsel for the opposite party No. 1 did not point out anything in the contents of his application u/s 4 of the U. P. Zamindars' Debt Reduction Act (XV of 1953) or in the pleadings of the case before the Special Judge or in his counter-affidavit which would indicate that any other question, except the applicability of the U. P. Zamindars' Debt Reduction Act (XV of 1953) to the present case, was raised on behalf of the opposite parties Nos. 1 and 2. No doubt, the actual work of calculation of the amount by which the decree passed u/s 14 of the U. P. Encumbered Estates Act is to be reduced would be done by the Court of the Special Judge. That, however, is merely a matter of arithmetical calculation according to the formula laid down in Section 4 of the U. P. Zamindars' Debt Reduction Act. According to the provisions of Section 4(2) of the said Act all that the Special Judge would have to do is to calculate the amount due on the 1st day of July, 1952. and then reduce it "in accordance with the formula given in the schedule". The decree passed u/s 14 of the Encumbered Estates Act gives the principal amount as well as the interest. The calculation of the amount due on the first day of July, 1952. has to be in accordance with the

said decree and is merely a matter of arithmetical calculation.

Similarly, its reduction, according to the formula given in the schedule is also done by a mere mechanical process. It would, therefore, appear that the principle finally determining the substantive rights of the parties has been laid down in the order of the High Court, and the mere fact that its implementation is to be done by the Special Judge in a routine fashion does not militate against the finality of the order passed by this Court.

17. The above view would be supported by the observations of their Lordships of the Supreme Court in *Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others*, in this case also the appeal before the Supreme Court was directed against an order of remand. It appears that in the said case three points relating to the substantive rights of the parties were determined by the High Court and the case was thereafter remanded to the trial Court. Dealing with the preliminary objection that the order of remand was not a final order, their Lordships observed as follows: --

"The decision on these three points finally determines the rights of the parties in regard to the ownership of the property.

"If it is private property, as it has been held by this Court, then a declaration must be given as prayed for by the plaintiff and as a consequence the injunction will follow."

Their Lordships, accordingly, repelled the preliminary objection holding that the order in question was a final order.

18. This case was interpreted in a Full Bench decision of this Court in *Savitri Devi Vs. Rajul Devi and Others*, In the said Full Bench case after referring to the facts of *Shiromani Gurdwara Parbandhak Committee and Others Vs. Raja Shiv Rattan Dev Singh and Others*, , it was observed as follows:

"All that can be said is that, according to this case it is not strictly necessary that the suit should terminate altogether. It is enough if all the substantive rights and liabilities of the parties have been finally decided by the High Court. This principle is not in conflict with any of the four propositions of law laid down by the Privy Council in AIR 1933 58 (Privy Council) Even if the suit was left alive, there were no rights and liabilities to be determined by the trial court, as all the substantive rights and liabilities were already determined by the High Court.

The suit remained alive not for the purpose of determining any rights and liabilities left undetermined by the High Court, but only for the purpose of implementing the rights and liabilities already determined by the High Court by doing the formal act of making a declaration to the effect and granting the consequential relief of injunction which necessarily followed from their adjudication by the High Court."

19. In this connection reference may also be made to a Division Bench case of

this Court in Kanpur Nagar Mahapalika Vs. Narain Das Haribansh, . In this case during the pendency of a suit, the matter in dispute was referred to an arbitrator who gave an award in favour of the plaintiff. The trial Court allowed the objection of the defendant and holding that the plaintiff's suit was barred by limitation, dismissed the same. In appeal the High Court set aside that order of the trial Court and rejected the defendant's objection to the award. After making the award a rule of the Court, the High Court directed that a decree should be prepare in accordance with the award. Following Full Bench case of this Court mentioned above, the Division Bench held that the decision of the" High Court to the effect that the dispute between the parties should be finally disposed of in terms of the award constituted a final determination of the rights of the parties, notwithstanding the fact that a decree had yet to be passed in terms of the award.

The relevant portion of the judgment in the Division Bench case runs as follows :--

"In Savitri Devi Vs. Rajul Devi and Others, , J. laid down the following three tests for deciding:--

1. It should terminate the proceedings in the High Court.
2. It should determine the rights and liabilities of the parties;
3. The determination of the rights and liabilities as is envisaged in condition No. 2 should be on merits, and should further be final and conclusive so as to cover the entire range of substantive rights and liabilities which from the subject-matter of real controversy in the suit or proceedings which initially gave rise to the dispute. The impugned order in the present case satisfies the three tests laid down by Beg, J. There is a final determination of the rights of the parties. It is true that a decree had to be passed in terms of the award. But in substance me rights of the parties were finally disposed of by the decision of the High Court upholding the award. There is, therefore, no difficulty in treating the decision as a judgment or final order.

"The learned Counsel for the plaintiff respondent relied upon Section 17 of the Arbitration Act. He pointed put that Section 17 of the Arbitration Act requires that, the Court has to pass a judgment in terms of the award. He, therefore, contended that the mere order upholding the award cannot amount to a judgment. We, however, find no serious difficulty in contemplating two judgments in the course of the same case.

"We are of the opinion that, the decision of the High Court, dated 3-5-1962 upholding the award amounts to a judgment or final order within the meaning of Clause (a) of Section 109, C. P. C "

20. Applying the principles laid down in the case of the Supreme Court cited above and the two cases of the Allahabad High Court thereafter to the present case, I am of opinion that the order dated the 30th April Mohammad Azamat

Azim Khan Vs. Raja Shatranji and Others, , is a final order and, therefore, fulfils the requirement in that regard in the opening portion of Article 133(1) of the Constitution of India.

21 The next question relates to the grant of certificate. The applicant has prayed for a certificate under Clauses (a), (b) and (c) of Article 133(1) of the Constitution of India. Under Clauses (a), and (b), the applicant would be entitled to a certificate as a matter of right. Under Clause (c) the matter is not one of right of a party but is one of discretion of the High Court to be exercised bearing in mind the importance of the matter. The first question, therefore, that arises is whether the applicant is entitled to a certificate as a matter of right under Clause (a) or (b) or both. The question as to whether Clause (b) would apply to the present case was not free from difficulty till the recent judgment of their Lordships in Chhitarmal Vs. Shah Pannalal Chandulal, .

Prior to this judgment there was a conflict of opinion on this point in the High Courts in India. One view was that Clause (b) was wide enough to embrace the subject-matter in dispute. The second view was that the difference in the phraseology of the two clauses pointed to the conclusion that Clause (b) contemplated not the property which was the subject-matter of dispute but some property in addition to or different from the property which was the subject-matter of dispute. The collocation of the words in the two clauses, the presence of the words "in dispute" along with the word "subject-matter" used in Clause (a) and the absence of the words "in dispute" or "in suit" in reference to the word "property" used in Clause (b) suggests that the property envisaged in Clause (b) is not the property which is the subject-matter of the dispute but some property other than that. The conflict of views in regard to Clause (b) is brought out in a Bench decision of the Orissa High Court in Haramani Devi and Others Vs. Balaram Panda and Others, while discussing the ambit of Clause (2) of Section 110 of the Code of Civil Procedure, the judgment refers to this conflict of views as follows:

"Though there is a conflict of views on the question whether "property" in this clause includes property which is in dispute in the suit or relates to property other than that in dispute in suit, the Patna and the Allahabad High Courts have taken the view that this clause is applicable to cases involving properties in dispute in the case".

The judgment then goes on to refer to the view expressed in Ishwari Prasad Singh and Others Vs. Sir Kameshwar Singh Bahadur and Others, and Gajram Singh and Others Vs. Lala Kalyan Mal . After discussing the same it concludes as follows:

"I respectfully agree with the view of the Patna and the Allahabad High Courts that Clause (2) of Section 110 of the CPC may apply also to property which is in dispute in the suit."

22. It may be mentioned that the reasoning in regard to Clause (2) of Section

110 of the CPC is also applicable to Clause (b) of Article 133(1) of the Constitution of India, which presents the same features.

23. The leading case in which the second view was expounded is that of *A.V. Subramania Ayyar v. Sellamal* ILR Mad 843: (AIR 1916 Mad 985). In this case it was held by Wallis, C. J. that the use of the word "directly" in Clause (2) of Section 110 of the CPC is consistent with this construction and, in any case, the words "involve directly" used in this clause cannot be read as including cases which involve nothing but the actual subject matter in dispute in the appeal. Srinivasa Ayyangar, J. in his judgment in the said case observed as follows:

"If the second clause stood by itself (see *Wheeler's Privy Council Practice*, page 694) it would be legitimate to construe it in the manner suggested, as the word "involves" is sufficiently wide to cover direct adjudication in respect of the subject-matter in dispute. In this case we have to take both the clauses together so as to give a meaning to both. In my judgment the first clause applies to cases where the decree awards a particular sum, or property of a particular value or refuses that relief (i.e.) to cases where the object-matter in dispute is of a particular value. In fact the words "objects in dispute" are used in the provisions relating to appeals from Guernsey. If the operation of the decision is confined only to the particular object matter, Clause (2) does not apply, and unless the case satisfies the conditions in Clause (1) there is no right of appeal. If the decision beyond awarding relief in respect of the particular object matter of the suit affects rights in other properties, Clause (2) would apply; also if matter in dispute is one which is incapable of valuation as in the case of easements, Clause (2) may apply."

24. In *Kartar Singh Vs. Ramkumar Bhagat and Another*, which is a Bench Decision of the Patna High Court, while discussing the ambit of Article 133(1)(b) of the Constitution and the second paragraph of Section 110 of the Code of Civil Procedure, it was observed as follows:

"There are however authorities to the effect that second paragraph of Section 110, Civil P. C., which corresponds to Article 133(1)(b) of the Constitution is meant to apply only to cases involving some claim or question to or respecting property other than that in respect to which the claim is brought and which may be taken into account therewith in making up the appealable value, or that it may possibly also apply to cases involving claims incapable of a money valuation such as claims to easements and the like. This is the principle laid down in AIR 1916 Mad 985 which has been followed by the Patna High Courts in *Maharaja Kesho Prasad Singh Vs. Shiva Saran Lal*,

25. The same view was taken in *Amarsingh and Another Vs. Karnail Kaur and Another*, and AIR 1929 75 (Nagpur)

26. In *Ram Baran Prasad Vs. Ram Mohit Hazra and Others*, which is a Bench decision of the Calcutta High Court headnote (a) which summarises the view taken in that case runs as follows:

"In order to come under Clause (b) it is necessary for the petitioner to prove that the decision complained of affects directly or indirectly some claim or question respecting property which is not the subject-matter of the suit. Unless the decision affects a claim or property other than the claim or property in dispute, Clause (b) does not come into operation. Otherwise, the provisions of Clause (a) of Article 133(1) would be rendered altogether nugatory. AIR 1916 Mad 985 and 50 CWN 255 and AIR 1925 159 (Privy Council) Relied on."

The above controversy, however, has been set at rest by their Lordships of the Supreme Court in their decision in *Chhitarmal Vs. Shah Pannalal Chandulal*, The relevant passage in their judgment runs as follows:

"To attract the application of Article 133(1)(b) it is essential that there must be omitting from consideration other conditions not material a Judgment involving directly or indirectly some claim or question respecting property of an amount or value not less than Rs. 20,000. The variation in the language used in Clauses (a) and (b) of Article 133 pointedly highlights the conditions which attract the application of the two clauses. Under Clause (a) what is decisive is the amount or value of the subject-matter in the Court of first instance and "still in dispute" in appeal to the Supreme Court; under Clause (b) it is the amount or value of the property respecting which a claim or question is involved in the judgment sought to be appealed from. The expression "property" is not defined in the Code, but having regard to the use of the expression "amount" It would apparently include money. But the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter Clause (a) will apply; if there is involved in the appeal a claim or question respecting property of an amount of value not less than Rs. 20,000 in addition to or other than the subject-matter of the dispute Clause (b) will apply."

27. Applying the principle laid down by their Lordships of the Supreme Court in the above case it appears to me that the proper clause applicable to the present case would be not Clause (b) but Clause (a). It is no doubt true that the order itself does not finally decide the amount of actual reduction that would be made as a result of the application of the U. P. Zamindars' Debt Reduction Act. That determination will be made as a result of the application of the principle laid down by this Court.

This consideration, however, is not enough to bring the case under Clause (b) because the decision of this matter by the High Court would still relate to a matter which is the subject-matter in dispute, and not to any matter other than the subject-matter in dispute. The subject-matter of dispute in the present case is the amount by which the decretal amount is to be reduced and the decision of the High Court also relates to the same matter. In the present case therefore, in my opinion, the clause that should be attracted is Clause (a) and not Clause (b).

28. If Clause (a) is applied to the present case then the condition relating to the valuation of the subject-matter of dispute in the Court of first instance as well as in appeal is admittedly fulfilled in the present case. In fact it is conceded by the learned Counsel for the opposite parties that the amount by which the reduction will be made would be far in excess of Rs. 20,000 being in the region of about Rs. 60,000 or so. Further it is also obvious that the order sought to be appealed against is not an order of affirmance but one of reversal. In this situation it must be held that all the conditions prescribed by Clause (a) of Article 133(1) are fulfilled in the case and the applicant is entitled to a certificate under Article 133(1)(a) as a matter of right.

29. So far as Clause (c) is concerned, it lays down that the case should be a fit one for appeal to the Supreme Court. Certificate under this clause cannot be claimed by a party as a matter of right. The grant of certificate under Clause (c) is a matter of discretion, and in exercising its discretion the Court takes into consideration the nature of the questions involved in the case. There is no doubt that the present case involves a question of great importance, as the principle laid down therein is likely to affect a large number of cases. The question arising in the present case is a question that is bound to arise frequently. The question, therefore, is one of public importance and the present case would appear to be a fit one for a certificate under Clause (c) as well. In view, however, of the fact that I am of the opinion that the applicant is entitled to a certificate as a matter of right under Clause (a) it is not necessary to further grant the certificate under Clause (c).

30. For the above reasons, I am of the opinion that this application should be allowed and the applicant should be granted a certificate under Article 133(1)(a) of the Constitution of India.

L. Prasad, J.

31. I have had the advantage of going through the judgments of my Lord the Chief Justice and my learned brother Beg. Two points arise for decision. Firstly, whether or not what is proposed to appeal from is a "judgment, decree or final order" within the meaning of that expression as used in Article 133 of the Constitution. Secondly, whether or not facts exist on the basis of which it is possible to issue a certificate under any of the three clauses of Article 133(1), Hon'ble the Chief Justice and my learned brother Beg are agreed that facts exist justifying the issue of a certificate under Clause (a) of Article 133(1). I am in respectful agreement with them and have nothing to add.

32. On the other point there has arisen a difference of opinion between Hon'ble Chief Justice and Beg J. The view taken by Hon'ble Chief Justice is that it is not for the High Court to enter into the question whether or not what is proposed to appeal from is a judgment, decree or final order. The view taken by Beg J. is that having regard to the opening clause of Article 133(1) the High Court has to decide for itself whether or not what is proposed to be appealed from is a

judgment, decree or final order. I find myself in respectful agreement with the view taken by Beg J.

It is true that the determination of a controversy whether or not what is proposed to appeal from is a judgment, decree or final order is not condition prerequisite to the issue of a certificate the grant of which depends on the existence of the facts envisaged by Clauses (a), (b) and (c) of Article 133(1). It is equally true that it is not for another Court but for the Court called upon to exercise jurisdiction to decide whether or not it possesses jurisdiction. That being so the decision of the controversy if or not what is proposed to appeal from is a judgment, decree or final order by this Court cannot stand in the way of the Supreme Court in deciding that controversy for itself if raised before it. All the same having regard to the opening clause of Article 133(1) it seems obvious that there arises no occasion for the High Court to ascertain the existence or otherwise of the facts on which depends the issue of a certificate unless it has first found, in case there arises a controversy on that question, that what is proposed to appeal from is a judgment, decree or final order.

On a plain reading of the language employed by Article 133(1) it seems impossible to hold that the party opposing a petition for the grant of a certificate thereunder is not entitled to press its rejection on the ground that what is proposed to appeal from is not a judgment, decree or final order. It is unnecessary for me to dilate on this point any further since it has been discussed threadbare by my learned brother Beg.

33. I accordingly agree that the application be allowed with costs and a certificate be granted under Article 133(1)(a) of the Constitution.

Beg, J.

34. For the reasons given in our separate judgment, we are of opinion that the applicant is entitled to a certificate under Article 133(1)(a) of the Constitution of India. We, accordingly, allow the application and direct that a certificate under Article 133(1)(a) of the Constitution of India be issued in favour of the applicant. The applicant shall be entitled to get his costs from the opposite parties.