

(1982) 02 MAD CK 0019
In the Madras High Court
Case No : O.S.A. NO. 178 of 1981

Ramasyee Agro-Industries Limited	Vs	APPELLANT
The India Sugar Refineries Limited		RESPONDENT

Date of Decision : 15-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 19

Citation : AIR 1983 Mad 194 : (1983) ILR (Mad) 254 : (1984) 97 LW 700 : (1983) 1 MLJ 91

Hon'ble Judges : V. Ramaswami, J; Singaravelu, J

Bench : Division Bench

Advocate : P.B. Krishnamurthi and R. Subramaniam, for the Appellant; A.S. Kailasam, for the Respondent

Judgement

V. Ramaswami, J.—This is an appeal against the rejection of an application filed under O. 16, R. 19 Civil P. C. read with S. 9 of the

Company Court Rules, for the issue of a subpoena to a witness residing at Bombay, directing him to attend and give evidence in a company

petition in which the appellant is the respondent.

2. The learned Judge dismissed the application on the ground that O. 16, R. 19 is not applicable to a case where the witness resides beyond a

distance of 500 kilometers, and since Bombay is beyond 500 kilometers the Court cannot issue any order directing the witness to attend in person

to give evidence and that the applicant must make his own arrangement to secure the evidence of that witness.

O. 16, R. 19 C.P.C. reads as follows:

19. No one shall be ordered to attend in person to give evidence unless he resides-

(a) within the local limits of the Court's ordinary original jurisdiction, or
(b) without such limits but at a place less than one hundred or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than five hundred kilometers distance from the Court house.

Provided that where transport by air is available between two places mentioned in this rule and witness is paid the fare by air, he may be ordered to attend in person.

3. The learned Judge was of the view that R. 19 (b) prescribes a distance limit for issue of orders to witnesses to attend in person to give evidence

and that the proviso makes no relaxation to the above prescription. We are unable to share this view. R. 19 (a) deals with cases where the person

to be called as a witness resides within the local limits of the Court's ordinary original jurisdiction, and R. 19 (b) deals with cases where he is

residing outside the Court's ordinary original jurisdiction. In cases where he resides outside the jurisdiction, the Rule provides (a) if he is at a place

less than 100 kilometers, or (b) if he is residing in a place less than 500 kilometers but there is a railway or steamer communication or other

established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate, the

Court can issue a summons calling upon him to attend in person and give evidence in the suit or proceedings. The proviso talks of two places

mentioned in the rule. The two places mentioned in R. 19 (b) are the place where the witness resides and the place where the Court is situate.

Therefore, when the proviso speaks of payment of air fare and calling the witness, we are of the view that it relates to a case where Cl. (a) or Cl.

(b) of R. 19 is not applicable. It is true that it is plausible to argue that whereas in the case of a person residing beyond the local limits of the Court

but within 500 kilometers, there is a discretion vested in the Court to call the witness under Cl (b), if the applicant is willing to pay the air fare of

that witness, no discretion is vested in the Court, and the words ""he may be ordered to attend in person"" occurring in the proviso should be read as

shall be ordered to attend in person"". But we think that the more reasonable and just way of reading the provision is that the proviso is applicable

to a case where the witness is residing at a place beyond a distance of 500 kilometers. We are, therefore, unable to agree with our learned brother

that the proviso makes no relaxation to the distance rule provided under Cl. (b) of R. 19.

4. Since the learned Judge did not go into the merits of the application as to whether he would or would not issue the subpoena, we think it desirable to remand the matter for fresh disposal.

5. The learned counsel for the respondent contended that an order refusing to issue a subpoena to a person to attend in person to give evidence is

not a judgment within Clause 15 of the Letters Patent and, therefore, no appeal is maintainable and this appeal is accordingly liable to be dismissed

as not maintainable. In this connection he referred to a certain passage in Mulla on the Cod of Civil Procedure, Vol. I, 13th Edn., at page 876,

wherein the learned author has observed :

Where a part applies for summonses to witnesses, but the application is refused, he cannot appeal from the order of refusal. He must wait until the

suit is disposed of, and if the decree in this suit goes against him, he may appeal from the decree, and set forth the refusal of the lower Court to

issue summonses as a ground of objection in the memorandum of appeal.

He also cited a decision of the Full Bench of the Calcutta High Court in Nurul Hoda and Others Vs. Amir Hasan and Another, , where an order

setting aside an abatement was considered as not a judgment ; and a decision of the Bombay High Court reported in Dhanbai Burjorji Cooper Vs.

Bablibai Shapurji Sorabji, , where an order refusing commission to examine a witness was considered to be not appealable under Cl. 15 of the

Letters Patent.

6. It is not necessary for us to consider all these cases as the Supreme Court had occasion to consider the meaning of ""judgment"" in Cl. 15 of

Letters Patent, in an elaborate judgment. After a consideration of the judgments of all the High Courts, the Supreme Court in the decision reported

in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, , has set out certain principles and we had to apply the same to this case. While giving

illustrative cases of interlocutory judgments, the Supreme Court observed (at p. 1816):-

In the course of the trial, the trial Judge may pass a number of orders whereby

some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the others, e.g., an order refusing an adjournment, an order refusing an adjournment an order refusing to summon an additional witness or document an order refusing to condone delay in filing documents after the first date of hearing, an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgment because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the trial Judge.

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. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the Appellate Court in appeal against the final judgment.

We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the Letters Patent. Suppose the trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases although the order passed by the trial Judge is purely discretionary and interlocutory, it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the Letters Patent. This is what was held by this Court in *Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York*, , as discussed above.

Let us take another instance of a similar order which may not amount to a judgment. Suppose, the trial Judge allows the plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be

inconsistent with the pleas taken by him but is not barred by limitation and does not work serious injustice to the defendant who would have ample opportunity to disprove the amended plea taken by the plaintiff at the trial.

In such case, the order of the trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning of Cl. 15 of the Letters Patent.

7. Though there is a reference in the first paragraph of the judgment extracted above to an order refusing to summon an additional witness, it is not a general statement that in every case of refusal to summon a witness the order could not be treated as a judgment. In fact, the other paragraphs show that if, by reason of such refusal it works serious injustice to the party concerned, that could be treated as a judgment appealable under Cl.

15. One of the principles, as we understand from the judgment in this case is, if the order causes gross or serious injustice to the party concerned an appeal would lie.

8. In the instant case, we may also point out, the learned Judge held that he had no jurisdiction to issue a subpoena in a case where the witness resides beyond 500 kilometers from the local limits of the Court and that the proviso to O. 16, R. 19, C.P.C. does not enable him to issue a subpoena. To such a case we consider that the order could not but be treated as a judgment, since that would amount to a denial of a right to defend the case itself and would cause serious injustice to the party concerned. We are not concerned with a case where the learned Judge, though accepted his jurisdiction to issue the same on the ground either the witness is unnecessary or the application itself was intended to drag or delay the proceedings or for any justifiable reason. Such type of orders may be treated as discretionary orders in the course of a suit which may, though cause some inconvenience or to some extent prejudice one party or other, cannot be treated as judgment, as observed by the Supreme Court in paragraph 119 of its judgment. But that is not the case with which we are concerned here.

9. Since the order is one by which the learned Judge felt that there was no jurisdiction vested in the Court to issue a subpoena, we consider that it causes great prejudice to the party and an appeal against such an order is maintainable.

10. In the result, the appeal is allowed, and for the foregoing reasons it is remanded to the learned trial Judge for fresh disposal on merits. There will be no order as to costs.

Appeal allowed.