
(1999) 06 MP CK 0011

In the Madhya Pradesh High Court

Case No : L.P.A. No's. 119, 121, 129 and 141 etc. etc. of 1999

Raymond Cement Works, Bilaspur and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 2
Constitution of India, 1950 — Article 226

Citation : AIR 2000 MP 19 : (2001) ILR (MP) 365 : (1999) 2 JLJ 334 : (1999) 2 MPLJ 689

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshreshtha, J

Bench : Division Bench

Advocate : B.L. Nema and Ravindra Shrivastava, for the Appellant; V.K. Tankha, A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

All these L.P.A.'s arise out of the common order and are being disposed of by this common order. Facts given in L.P.A. No. 119/99 have been taken into consideration for disposal of all these appeals. The learned Single Judge modified the interim order passed earlier and directed that during the period of six weeks from the date of the order, i.e. 6-4-99, all the petitioners shall deposit 50% of the demanded amount and shall furnish bank guarantee for the balance of 50%. The matter was posted to be listed for 25-6-99 for further hearing. Aggrieved against this interim order, the present L.P.A. has been filed by the appellants.

It is not necessary to dilate on the detailed facts. Suffice it to say that certain mining demands were raised by State against the petitioners. Therefore, they filed writ petitions challenging that demand and prayed for stay. Initially whole demand was stayed by learned Single Judge. Thereafter the learned Single Judge modified the earlier stay order and directed payment of 50% of the amount by order dated 6-4-1999. These appeals arise out of this interim order passed by

the learned Single Judge in pending writ petitions. The question before us is whether these appeals against interim order are maintainable or not.

Learned counsel for the parties submitted that since the order to question will operate harshly against the appellants and will seriously prejudice their rights, therefore, the order dated 6-4-99 deserves to be quashed by this Court.

The appeals have been filed under Clause 10 of the Letters Patent. Clause 10 of the Letters Patent reads as under :

"10. Appeal to the High Court from Judges of the Courts -

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Nagpur from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of the appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of original jurisdiction, and not being a sentence or order passed or made in the exercise of the powers of superintendence under the provisions of section one hundred and seven of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court pursuant to section one hundred and eight of the Government of India Act and that notwithstanding anything hereinbefore provided, an appeal shall lie to the said High Court from a Judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to section one hundred eight of the Government of India Act made in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the Judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgment of Judge of the said High Court or of such Division Court shall be to Us, Our Heirs and Successors in Our or Their Privy Council, as hereinafter provided."

Clause 10 clearly says that an appeal shall lie against the judgment of a learned Single Judge. The question is whether the present order is within the definition of "judgment" or not. "Judgment" has been defined in the CPC u/s 2(9) as under :

"judgment" means the statement given by the Judge on the grounds of decree or order." "Decree" has been defined in Section 2(2) of the CPC as under :

"(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation -- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

Therefore, L.P. A. will only lie in case where there is adjudication of the rights of parties or controversy involved in the matter. Such interlocutory orders do not decide the controversy finally. Writ petitions are also pending before the learned Single Judge.

In this connection, reference may be made to the decision of this Court in case of *Prakash Chandra Agrawal v. State of M.P.* 1996 (1) MP 318. This was also an L.P.A. directed against the order passed by a learned Single Judge in a writ petition and the learned Judges observed that such an order is not a judgment in terms of Clause 10 of the Letters Patent for finally deciding the rights of parties and, therefore, it was held that L.P.A. is not maintainable. *Rajas than High Court* also, in an identical situation, in case of *Gulam Abbas Kamruddin Bhalamwala Vs. State of Rajasthan and Others*, has taken a similar view as under :

"Thus, the settled view of this Court is that interlocutory order of this type is not appealable under Chapter VIII, Rule 5 of the Rules of Court. Since the appeal is not maintainable, it is not necessary to enter into merits of the appeal."

Similar view was taken in case of *State Vs. Hindo Open Sugar Mills and Others*, and it was observed as under at page 111; of AIR :

"It is not necessary to examine any other case for the simple reason that the basic ingredients of the word "judgment" have been authoritatively laid down by the Supreme Court in the above decision. The small question which arises for our consideration is whether the order passed by the learned single Judge on 17th January 1973 is a judgment against which an appeal is competent u/s 11 of the Rajasthan High Court Ordinance. Our answer to the question is plainly in the negative. Our reasons are that the order operated subject to the ultimate decision of the rights of the parties in regard to the validity of the notification of 28th November 1972. Specific conditions have been imposed by the learned single Judge under which this order has been passed. All arguments against the advisability or otherwise of such an order are irrelevant for the purposes of deciding the question whether the order appealed against is a judgment or an interlocutory order. The grievance of the learned counsel which he more than once emphasised, was that this order settled the fate of the 7 petitions in favour of the petitioners. The crucial question whether the notification is valid and the fundamental rights of the petitioner are violated or not remains to be decided. The operation of the impugned notification has been kept in abeyance until the basic questions were decided. In our opinion, it is a clear case of an interlocutory order being assailed in appeal u/s 18 of the High Court Ordinance which is not permissible. The order of 17-1-1973 is not a Judgment and these seven appeals, therefore, are not maintainable."

Our attention was also invited to the case of *Radhey Shyam Vs. The State of U.P.*

and Others, . The Allahabad High Court also took the same view that the interim order does not decide the right of parties as such L.P.A. is not maintainable. It was observed as under at page 40 :

Thus the settled view of this Court is that interlocutory order of this type is not appealable under Chapter VIII. Rule 5, Rules of Court. Since the appeal is not maintainable, it is not necessary to enter into the merits of the appeal."

Learned counsel for the appellants also invited our attention to the decision of Supreme Court in case of Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . In this case, their Lordships have laid down the ratio which reads as under :

That the trial Judge being a senior Court with vast experience of various branches of law occupying the 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 order 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. That the interlocutory order in order to be a judgment, must maintain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceedings or in the suit itself or in a part of the proceedings."

However, this was a matter arising with regard to an order passed under Order 41, Rule 1 of the Code of Civil Procedure. While dealing with L.P.A. with regard to orders arising from writ jurisdiction, their Lordships have very categorically observed hi para 125 as under :

"Before closing this judgment, we may indicate that we have refrained from expressing any opinion on the nature of any order passed by a trial Judge in any proceeding under Article 226 of the Constitution which are not governed by the Letters Patent, but by rules framed under the CPC under which in some High Courts, writ petitions are heard by a Division Bench. In other High Courts, writ petitions are heard by a Single Judge and a right of appeal is given from the order of the Single Judge to the Division Bench after preliminary hearing."

Their Lordships have not expressed any opinion with regard to maintainability of the L. P. A. against the order passed by the learned Single Judge in exercise of powers under Art. 226 of the Constitution. This Judgment essentially decided a civil matter arising under the CPC with regard to appointment of Receiver. Therefore, this judgment is of no avail to the appellants.

Shri B.L. Nema, Shri Ravindra Shrivastava, and Shri Sapre, learned counsel have

urged that sometimes though the order may not be judgment, but it may cause great injustice to the parties. Therefore, jurisdiction of L.P.A. should not be circumscribed and should be kept open for the parties so that it may not result in injustice. It is true that sometimes such a situation may arise, but as a principle, it has to be laid down that against such an interlocutory order, no Letters Patent appeal is maintainable. After all expediency warrants that when law only contemplates one intra Court appeal, then permitting such appeals-will open flood gates of appeals. However harsh it may be, but for one hard case, law cannot be otherwise. Laws are laid down on the basis of generality. Hence the L.P.A. against the order passed by the learned Single, Judge vacating the stay order or confirming it in writ petition is not maintainable.

Thus in this view of the matter, all the Letters Patent Appeals are dismissed. The interim order passed by this Court is vacated. No order as to costs.