
(1975) 03 DEL CK 0022

In the Delhi High Court

Case No : Letter Patent Appeal No. 61 of 1968

Registrar of Companies

APPELLANT

Vs

Hardit Singh Giani

RESPONDENT

Date of Decision : 14-03-1975

Acts Referred:

Citation : (1975) ILR Delhi 1(2) : (1975) RLR 582

Hon'ble Judges : Yogeshwar Dayal, J; V.S. Deshpande, J; T.V.R. Tatachari, J

Bench : Full Bench

Advocate : Harish Chandra, G.S. Vohra and R.C. Beri, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) After the respondent Shri Hardit Singh Giani was appointed as a liquidator of National Planners Limited, a company registered under the Companies Act, in voluntary winding up proceedings, the liquidation proceedings came under the supervision of the Court. The Registrar of Companies applied to the District Judge exercising jurisdiction under a notification issued u/s 10 of the Companies Act for removal of the liquidator. The District Judge granted the prayer and removed the liquidator. An appeal was filed against the decision of the District Judge u/s 483 of the Companies Act to this Court. Hardy, J. (as he then was) by the order under appeal set aside the order of the District Judge and reappointed Shri Giani as the liquidator and also Shri V. S. Joneja, Official liquidator, as the additional liquidator directing both of them to complete the winding up proceedings expeditiously. This appeal under clause 10 of the letters Patent has been filed against the decision of Hardy, J. (as he then was), without a certificate from the learned Judge.

(2) The appeal came up for hearing before a Division Bench consisting of V. S. Deshpande and S. Rangarajan, JJ. A preliminary objection was raised that the letters patent appeal was not maintainable without a certificate from the learned Single Judge. In similar circumstances. Hardy, C. J. and Prakash Narain, J. in Sri

Ram and others v. M/s. Bulbhdass and others (1972) II Delhi 530 had held that an appeal does not lie under clause 10 of the Letters Patent without a certificate from the learned Single Judge who decided the appeal u/s 483 of the Companies Act against the order of the District Judge exercising jurisdiction under a notification issued u/s 10 of the Companies Act.

(3) The Division Bench was of the view that the decision in Shri Ram v. Bulbhdass needed to be reconsidered and, Therefore, referred the question to a Full Bench. That is how the question has come up now before us

(4) The appealability of orders under these circumstances may arise, in two sets of cases. On the one hand, a statute may expressly bar a further appeal which would have otherwise been maintainable under clause 10 of the Letters Patent. For instance, section 39 of the Delhi Rent Control Act, 1958 allows a second appeal to the High Court but section 43 of the said Act says that "save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final". It was, therefore, held by the Supreme Court in South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others, that in view of the finality of the orders under the Act by section 43 of the Act, no appeal would lie under clause 10 of the Letters Patent. Similarly, section 39(2) of the Arbitration Act allows an appeal to the High Court against orders passed under that Act but expressly bars a second appeal thereafter. This provision was held to cut down the ambit of clause 10 of the Letters Patent under which otherwise a second appeal would have been competent (Union of India (UOI) Vs. Mohindra Supply Company,) .

(5) On the other hand are the statutes which allow an appeal to the High Court without saying anything more. For instance, an appeal lies to the High Court u/s 54 of the Land Acquisition Act against the decision of the civil court in a reference made to it u/s 18 of the said Act. The order of the High Court passed in an appeal u/s 54 of the Land Acquisition Act was held to be appealable under clause 10 of the Letters Patent to a Division Bench in Siri Chand Sheo Lal and Others Vs. Union of India (UOI) and Others, , inspired by the words "an appeal shall only lie in any proceedings under this Act to the High Court" used in section 54. The thrust of the word "only" was taken to be towards the forum, namely, the High Court and was not construed to mean that any further appeal against the decision of the High Court was barred. Similarly an appeal lies to the High Court u/s 110-D of the Motor Vehicles Act, 1939 against the decision of the Motor Accidents Claims Tribunal. In the Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others, , A Full Bench of this Court held that an appeal against the decision of a learned Single Judge would lie under clause 10 of the Letters Patent to a Division Bench.

(6) The question in this appeal is in which of these two classes of statutes, section 483 of the Companies Act, 1956 falls. It corresponded to section 202 of the Companies Act, 1913 and section 169 of the Companies Act, 1882. In Basheshar Nath v. Kanhaya Lal, 1913 PR 134, it was held by a Division Bench of

the Lahore High Court that u/s 169 of the Companies Act, 1882, only one appeal was competent and if that appeal was made to the Divisional Court, no further appeal lay to the Chief Court. Section 169 was construed to mean that the appeal (and only one) would lie only there under but no further appeal would lie against an appellate judgment made u/s 169 even though an appeal to the Chief Court would have otherwise been competent against the decision of a Divisional Judge u/s 39(C) read with section 40 of the Punjab Courts Act. As the High Court of Lahore had not then come into existence, the consideration of clause 10 of the Letters Patent of the High Court of Lahore did not arise in that case. Therefore, the question whether the language of clause 10 of the Letters Patent is different needs to be considered afresh.

(7) In our view, the facts and circumstances of the present case and those in *Shri Ram v. Bulbhdass* on the one hand, are to be distinguished from those in *Bashesar Nath v. Kanhaya Lal* on the other hand. Section 483 of the Companies Act, 1956 which applies to the former merely states that the appeals would lie in the same manner in which and subject to the same conditions under which they would lie from any order or decision of the Court in cases within its ordinary jurisdiction. The law governing appeals would, Therefore, be law which would govern the appeals against the orders of the Court in its ordinary jurisdiction. The order of the District Judge was passed in his ordinary jurisdiction. It was, Therefore, appealable to the High Court u/s 96 of the Code of Civil Procedure. The order of the learned Single Judge passed in the first appellate court jurisdiction became subject to an appeal under clause 10 of the Letters Patent. The relevant portion of clause 10 of the Letters Patent is as follows :-

"AND we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the Judgment [. . .] of one Judge of the said High Court or one Judge of any Division Court pursuant to section 108 of the Government of India Act."

It will be observed that the rule in clause 10 of the Letters Patent is that an appeal lies from the judgment of one judge of the High Court to a Division Bench of the High Court. This rule is subject to exceptions. The words Constituting the exception which are put in brackets and which were omitted in stating the rule above are as follows :-

("NOT being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act or in exercise of criminal jurisdiction.").

Certain illustrations of the exception may be stated as below :-

"1. Where the judgment of the Single Judge is in an appeal against a decree or

order by a subordinate court sitting in appeal, appeal would lie only on a certificate granted by the learned Single Judge;

2. Where the judgment of the Single Judge is in a Revision (revisional jurisdiction);

3. Where the judgment is not a sentence or order passed or made (a) in exercise of power of superintendence under the provisions of section 107 of the Government of India Act, (b) in the exercise of criminal jurisdiction."

Then follows that part of clause 10 of the Letters Patent which requires a certificate to be given by the Single Judge before an appeal can be filed to the Division Bench. It runs as follows:-

".....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 108 of the Government of India Act, made on or after the first day of February one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the 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 judgments of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided."

It shows that it is only when a learned Single Judge of this Court bears an appeal against the decision of a court subject to the superintendence of the High Court which was itself given in exercise of appellate jurisdiction that the question of a grant of certificate by the learned Single Judge would arise inasmuch as the decision of the learned Single Judge would be a decision in second appeal.

(8) On the other hand, section 169 of the Companies Act, 1882 which was referred to in *Bashesar Nath v. Kanhaya Lal* had the following significant words at its end, namely :-

"APPEALS from any order or decision made or given in the matter of the winding up of a Company by the Court may be had in the same manner and subject to the same conditions in, and subject to which, appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction, subject to this restriction, that no such appeal shall be heard unless notice of the same is given within three weeks after which any order complained of has been made."

It is because of the presence of these words that the Court observed in *Busheshar Nath v. Kanhaya Lal* as follows :-

"NOW "the Court" is clearly the Court of the District Judge, and the "order complained of" clearly means, in our opinion, the order of the same Court. And it

would clearly be an absurdity to require that a further appeal should not be heard unless notice of the same had been given within three weeks from the order of the first Court, for, in almost every case, it would be futile to hope that the appeal to the lower Appellate Court, however promptly lodged, would be decided within three weeks from the date of the first Judge's order. We hold Therefore that the 3 weeks spoken of, date from the order of the District Judge and that the restriction imposed refers only to first appeal."

(9) There are no such limiting words in section 483 of the Companies Act, 1956. We are of the view, Therefore, that the decision in *Bashesar Nath v. Kanhaya Lal* could not have been helpful in deciding the question before the Division Bench in *Sri Ram v. Bulbhdass* or the question before us in the present case. For these reasons, we are unable to agree with the decision of the Division Bench in *Sri Ram v. Bulbhdass* that a certificate was needed under clause 10 of the Letters Patent for filing an appeal against the decision of a Single Judge given in the exercise of first appellate jurisdiction against the order of the District Judge. As already pointed out, such a certificate would be necessary only when an appeal is sought to be filed under clause 10 of the Letters Patent against the decision of a Single Judge of the High Court in the exercise of second appellate jurisdiction.

(10) In view of the above legal position, the appeal is maintainable without the need of a certificate from the learned Single Judge who passed the order appealed against and will be dealt with by the Division Bench according to law