
(1987) 08 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Letter patent Appeal No. 261 of 1987

R.T. Gupta Industries and Another

APPELLANT

Vs

Kwality Spinner, Ludhiana and Another

RESPONDENT

Date of Decision : 03-08-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Government of India Act, 1915 — Section 107

Citation : AIR 1988 P&H 224 : (1988) 1 ILR (P&H) 491 : (1988) 93 PLR 308

Hon'ble Judges : H.N. Seth, C.J.; M.S. Liberhan, J

Bench : Division Bench

Judgement

1. Aggrieved by an order dt. March 20, 1987, passed by learned single Judge of this Court in R.S.A. No. 489 of 1987, R.T. Gupta Industries (defendant in the suit giving rise to the second appeal has filed the present letters patent appeal under CLAUSE X of the Letters Patent applicable to this Court.

2. M/s. Kwality Spinners through its partner Bhagwan Dass filed a suit for recovery of Rs. 1,73,300/- against R.T. Gupta Industries (hereinafter described as defendant). During the pendency of the suit, Bhagwan Dass, a partner of the plaintiff-firm, who has been arrayed as plaintiff 2 obtained an order from the trial Court restraining the defendant from withdrawing a sum of Rs. 1,73,300/- from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi. That order continued to be operative till the suit was eventually dismissed by the trial Court. The plaintiffs questioned the correctness of the decree passed by the trial Court by filing a first appeal which too was dismissed by the tower. appellate Court. The plaintiffs then filed Regular Second Appeal No. 489 of 1987 before this court and also moved an application praying that the defendant-respondents be restrained from withdrawing the amount of Rs. 1,73,300/- from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi, during the pendency of the second appeal. While issuing notice of motion, the Court granted ex parte injunction restraining the respondents from withdrawing the sum of Rs, 1,73,300/- from the office of the Chief Controller of

Accounts (Department of Supplies), New Delhi.

3. The respondents appeared and contested the motion as also the prayer for injunction. After hearing counsel for the parties. the learned single Judge came to the conclusion that a prima facie case for admission of the said appeal had been made out. Accordingly, he admitted the appeal for detailed consideration. So far as the prayer for the interim relief was concerned learned Judge vide his order dt. Mar. 20, 1987, directed that the injunction which had already been issued by the Court restraining the defendant from withdrawing the sum of Rs. 1,73,300/- from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi, was to continue to operate till the decision of the appeal. He, however, gave an option to the defendant to have the injunction order vacated by furnishing bank guarantee for the refund of the sum of Rs. 1,73,300/- . Aggrieved, the defendant filed the present letters patent appeal under Clause X of the Letters Patent and questioned the validity of the order restraining him from withdrawing the sum of Rs. 1,73,300/- .

4. The office of the court has raised following objection to the maintainability of the present appeal :--

"Present L.P.A. has been filed against an order passed in Regular Second Appeal. Section 100A C.P.C. provides no further appeal against any order passed in Second Appeal As to how is this L.P.A. competent"? This question might be brought to the kind notice of Hon"ble Judges at the time of motion hearing of this appeal."

5. Section 100A C.P.C. runs thus :--

"Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single judge of a High Court, no further appeal shall lie from the Judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal."

Learned counsel for the appellants urged that the objection raised by the office cannot be sustained inasmuch as S. 100A C.P.C. has no application to the facts of the present case. He emphasized the words "where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court....." used in the section and contended that the bar created by S. 100A becomes operative only in respect of cases where, after decision of a second appeal, further appeal from the second appellate decree or order is contemplated. It does not apply to cases where the appeal is directed against an order made during the pendency of a second appeal.

6. Appeal is a creature of a statute. Section 100A does not confer any right of appeal. It merely inhibits, in the circumstances mentioned in the section, the right of appeal conferred by the Letters Patent of a High Court or in cases where

the same has been permitted by some other law, or instrument having the force of law. Accordingly, before considering the question as to whether present appeal stands barred by the provisions contained in S. 100A C.P.C., we have first to see whether the appeal in question is otherwise maintainable under the Letters Patent, or some other law or some instrument having the force of law. In case the appeal is not otherwise maintainable. it would not become maintainable merely because it does not happen to be barred by S. 100A C.P.C.

7. The appellant claims that the present appeal is maintainable under Clause X of the Letters Patent. He does not rely on any other statutory provision for this purpose. Relevant portion of Cl. X of the Letters Patent applicable to this Court reads thus :--

"And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore 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 appellate jurisdiction by a Court subject to the superintendence of the said High Court. and not being an order made in the exercise or revisional jurisdiction, and not being a sentence or order passed or made in the exercise of power of superintendence under the provisions of S. 107. Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court.....

This clause in the letters patent confers a right of appeal against all judgments of single Judges of the High Court except (1) Judgments rendered 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; (2) orders made in exercise of revisional jurisdiction; (3) sentence or order passed or made in the exercise of power of superintendence under the provisions of S. 107, Government of India Act, and (4) sentence or order passed in exercise of criminal jurisdiction by one Judge of the High Court.

8. For the purpose of present discussion, we may take it that the order dt. Mar. 20, 1987, passed by the learned single Judge injuncting the appellants from withdrawing the sum of Rs. 1,73,300/- from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi, and permitting them to do so only on furnishing bank guarantee is a "judgment" with the meaning of clause X of the Letters Patent, quoted above. However, it cannot be doubted that the said order has been made by the learned single Judge in the exercise of his appellate jurisdiction which he was exercising in respect of a decree of the lower appellate Court, subject to the superintendence of this Court. Accordingly, the present judgment falls in the first of the four categories enumerated above and is not appealable under clause X of the Letters Patent.

9. Learned counsel for the appellants attempted to take the case out of the purview of the first category mentioned above by contending that the order appealed against is an original order which has no bearing on the validity or

otherwise of the decree under appeal. Accordingly, it cannot be said that the order is in respect of the decree under appeal and as such it would not fall within the ambit of first category of cases mentioned above. We are unable to accept this submission. What is prohibited under this clause is not merely a further appeal against a decree or order which finally disposes of a second appeal. The clause also prohibits an appeal against a judgment or order made by a single Judge of the High Court while exercising the appellate jurisdiction vis-a-vis an appellate order made by a court subject to its superintendence. In other words, clause X of the Letters Patent does not provide for an appeal against any judgment of a single Judge rendered while exercising its second appellate jurisdiction.

10. As undoubtedly the impugned order (judgment) has been passed by a learned single Judge of the Court while exercising its second appellate jurisdiction (i.e. while exercising its appellate jurisdiction in respect of a decree passed by an appellate court subject to its superintendence), we are clearly of opinion that the instant case falls in first of the four categories against which letters patent appeals have not been allowed by clause X of the Letters Patent.

11. Learned counsel for the appellants could not point out any other provision under which the order of the learned single Judge has been made appealable. Since appeal is a feature of a statute and no statutory provision enabling the appellants to file an appeal against the order of the learned single Judge has been brought to our notice, the present appeal fails and is dismissed without any order as to costs.

12. Appeal dismissed.