
(1973) 11 CAL CK 0006
In the Calcutta High Court
Case No : L.P.A.T. No. 2398 of 1970

Sachindra Mohan Das

APPELLANT

Vs

M.M. Chakraborty, Official Receiver

RESPONDENT

Date of Decision : 30-11-1973

Acts Referred:

Citation : (1973) 2 ILR (Cal) 700

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Haripadu Saha, for the Appellant;Pravat Kumar Sengupta and Tapas Chandra Roy, Amicus Curiae, for the Respondent

Judgement

P.N. Mookerjee, J.—This matter has been brought up before us under the following circumstances:

The appeal before us purports to be an appeal under Clause 15 of the Letters Patent against a judgment of our learned brother Chittatosh Mookerjee J., passed in F.A. 1004 of 1964, which was directed against a decree of the learned Judge, Sixth Bench, City Civil Court, Calcutta. The appeal has not been registered by this Court as, according to the stamp reporter, it cannot be registered without a certificate from the Hon"ble Judge against whose judgment the present appeal has been filed.

2. The Appellant's contention is that, in cases like the present, no such certificate is necessary.

3. The matter was put up before the learned Additional Registrar, who after a careful and correct analysis of the relative legal position took the view that the Appellant was right in contending that no certificate would be necessary in the instant case as demanded by the learned stamp reporter. As, however, Rule 3 of chap. VIII of the Appellate Side Rules of, this Court, upon which reliance was placed by the learned stamp reporter, apparently supports the contrary point of view, the learned Additional Registrar, after some very pertinent observations on

the said Rule, referred the matter to the Bench for a decision of the above dispute.

4. Thereafter, in view of the fact, that the question involved here is one which may frequently arise in this Court under the present circumstances, we, on assignment of the above matter to us, directed issue of notice on the learned Senior Government Advocate; and after hearing the learned Advocate for the Appellant and the learned senior Government Advocate, we have reached the conclusion, that the Appellant's above contention is correct.

5. Clause 15 of the Calcutta Letters Patent provides for appeals against judgment of the learned Single Judge of this Court. The clause has two parts. The first part, in brief, provides for such appeals in all cases except when such judgments are passed in the second appeals or in the exercise of revisional or criminal jurisdiction. The second part is really in the nature of an exception to the first, inasmuch as it provides, by way of relaxation appeals under the above clause even in cases of the second appeals provided the learned Judge concerned declares or certifies that the case is a fit one for appeal. The second part is thus really an exception to the exception, mentioned in the first part and the net position is that, for appeals under the above clause, certificate is required only when they arise from the second appeals, as such cases fall under the second part and no certificate is necessary in any other case, as the same comes under the first. The case before us, obviously, comes under this latter category as the appeal here arises from a first appeal and thus falls directly and exclusively within the first part of the above clause which prescribes no requirement for any certificate. No certificate, therefore, will be necessary in the instant case.

6. This, indeed, is not disputed by the learned senior Government Advocate, who very fairly accepted the legal position, as mentioned above.

7. We would, accordingly, hold that in the instant case no certificate would be necessary and the appeal, if otherwise in form and in compliance with the other requirements of law, will be registered and it will thereafter proceed in accordance with law.

8. What we have said above would be amply supported by the Full Bench decision of this Court, reported in the case of Ram Charan Goldar v. Hamid Ali ILR (1929) 56 Cal. 507 and the decisions of other High Courts under corresponding provisions of their Letters Patents, namely, Ramji Singh v. Mt. Chhulchhana Kuer ILR (1910) 37 Pat. 674 L. Ram Sarup Vs. Mt. Kaniz Ummehani, and AIR 1940 39 (Nagpur) which are mentioned by the learned Addl. Registrar in his referring order in the instant case.

9. It is only necessary to add that, in the above view of the matter, an amendment of the relative provisions of chap. VIII of the Appellate Side Rules, particularly Rule 3, seems to be necessary and the matter should be brought to the notice of the appropriate authority for necessary action in the light of the learned Addl. Registrar's note or referring order in the instant case, which

sufficiently explains the position in that respect.