

(2006) 09 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 719 of 2004

Savita Devi

APPELLANT

Vs

Sukhvinder Kaur

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Citation : AIR 2007 MP 146 : (2007) 2 JCR 293 : (2007) 2 JLJ 4 : (2006) 3 MPJR 301 : (2006) 4 MPLJ 617

Hon'ble Judges : A.K. Patnaik, C.J.;Dipak Misra, J;Deepak Verma, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.

A judgment was delivered on 13-7-2006 in this appeal by a Division Bench of this Court sitting at Gwalior. In the said judgment, two differing opinions were expressed by the learned Brother Judges. Under Rule 11 of Section 1, Chapter 1 of the High Court Rules, when in any appeal or civil matter is heard by a Bench of two Judges and the Judges composing the Bench differ on a point of law and state the point on which they differ, the proceedings shall be placed before the Chief justice for the purpose of nominating one or more of the other Judges to deal with the matter. This provision in Rule 11 Section 1, Chapter 1 of the High Court Rules came up for interpretation before a learned Single Judge of this Court in Laxminarayan v. Ramjidas 2001(3) MPLJ 410 and the learned Single Judge held that the said provision in Rule 11 of Section 1, Chapter 1 of the High Court Rules provides that the Division Bench must formulate the point of law on which the two Judges composing the Division Bench differ and must also state the said point on which they differ and thereafter the matter is to be placed before the Chief Justice for the purpose of nominating one or more of the other Judges to deal with the matter. The learned Single Judge further held in the aforesaid case of Laxminarayan v. Ramjidas (supra), that in the absence of formulation of point of law by the Division Bench on which the two Judges differ, it is neither possible nor permissible to the third Judge/nominated Judge to cull

out from the conflicting separate judgments rendered by the Judges constituting the Division Bench the point of law on which they have differed. In the said judgment in the case of *Laxminarayan v. Ramjidas* (supra), the learned Single Judge further held that the key to unlock a situation of this kind is to place the matter before a Larger Bench which can effectively deal with the situation as it will not be under any inhibition to hear the case. It is on account of the aforesaid view taken by the learned Single Judge of this Court in *Laxminarayan v. Rnmjidas* (supra), that the present matter arising out of the aforesaid difference of opinion of the two Judges of the Gwalior Bench of this Court in this appeal has been placed before us.

We have examined the provisions of Rule 11 of Section 1, Chapter 1 of the High Court Rules and we find that it is provided in Rule 7 of the said Section 1, Chapter 1 of the High Court Rules that a Full Bench shall ordinarily be constituted of three Judges but may be constituted of more than three Judges in pursuance of an order in writing by the Chief Justice. It is further provided in Rule 8 of Section 1, Chapter 1 of the High Court Rules that the Chief Justice shall nominate the Judges constituting a Full Bench. Thus, the Chief Justice has the exclusive power to constitute a Full Bench of three or more Judges and also to nominate the Judges of a Full Bench.

Rule 10 of Section 1, Chapter 1 of the High Court Rules provides for referring of matters for consideration by two or more Judges and Rule 11 of Section 1, Chapter 1 of the High Court Rules provides for referring of a matter to one or more of the other Judges where there is a difference between the Judges composing of the Division Bench on a point of law. The said two Rules 10 and 11 of Section 1, Chapter 1 of the High Court Rules & Orders are quoted herein below:

10. If a Judge sitting alone considers that the decision of the proceedings pending before him involves reconsideration of a decision of two or more Judges he may refer it to the Chief Justice with the recommendation that it be placed before the Full Bench for a decision on a slated question or questions. The referring Judge shall dispose of the proceedings in accordance with the decision of the Bench on the question or questions referred to it.

When in any appeal or civil matter heard by a Bench of two Judges, the Judges composing the Bench differ on a point of law and state the point on which they differ the proceedings shall be placed before the Chief Justice for the purpose of nominating one or more of the other Judges to deal with the matter.

It will be clear from the provision of Rule 10 of Section 1, Chapter 1 of the High Court Rules quoted above that if a Judge sitting alone considers that the decision of the proceedings pending before him involves reconsideration of a decision of two or more Judges, he may refer it to the Chief Justice with a recommendation that it be placed before a Full Bench for a decision on a stated question or questions. Hence, it is only in a case where reconsideration of decision of two or

more Judges is thought necessary that a reference may be made to the Chief Justice with the recommendation that it be placed before the two or more Judges. But the said provision in Rule 10 of Section 1, Chapter 1 of the High Court Rules does not contemplate reference to a Full Bench where two Judges composing of" Division Bench differ on a point of law but have not stated the point on which they differ.

Rule 11 of Section 1, Chapter 1 of the High Court Rules quoted above provides that where a Bench of two Judges differ on a point of law and state the point on which they differ, the proceedings shall be placed before the Chief Justice for the purpose of nominating one or more of the other judges to deal with the matter. The aforesaid provision, therefore, confers a discretion on the Chief Justice nominate either one Judge or more Judges to deal with the matter in case of a difference on a point of law between the two Judges composing the Division Bench. The aforesaid Rules nowhere provide that in a case where the judges composing the Division Bench do not state the point of law on which they differ, the case has to be referred to a Larger Bench for decision. In such cases also, the matter has to be placed before the Chief Justice for an appropriate order.

For the aforesaid reasons, we overrule the decision of the learned Single Judge in *Laxminarayan v. Ramjidas* (supra). The matter will now be placed before the Chief Justice for an appropriate order.