

(1925) 09 BOM CK 0009
In the Bombay High Court

Shri Goverdhanlalji Maharaj	Vs	APPELLANT
Shri Chandraprabhavati		RESPONDENT

Date of Decision : 15-09-1925

Acts Referred:

Citation : AIR 1926 Bom 136 : 92 Ind. Cas. 552

Hon'ble Judges : Norman Macleod, C.J;Coyajee, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—The plaintiff filed this suit with a view to get the terms of the consent decree, passed on June 13, 1912, whereby inter alia her maintenance was fixed at Rs. 2,000 per every two months, varied, on the ground that circumstances had arisen which justified her asking for an increase. The defendant in his written statement submitted that the suit was not, maintainable, that the sum payable to the" plaintiff had been fixed by a consent decree and could not be altered without the consent of the defendant.

2. A preliminary issue was raised in a somewhat unintelligible form, viz., whether the suit was not maintainable as alleged in para. 1 of the written statement. After hearing arguments on that issue, the Judge came to the conclusion that the suit was maintainable, and as the parties were not ready to go on with the hearing, the further hearing of the suit had, to be adjourned.

3. But it appears that on that decision an order was drawn up as follows:-- "The suit being this day called on for judgment this Court doth declare that this suit is maintainable."

4. Against that decision the defendant has filed an appeal. The respondent has taken an objection that no appeal lies as there is no judgment before this Court within the meaning of that word under Clause 15 of the Letters Patent. Whether a decision is a judgment or not is a question which very often arises, and, I have no desire myself to add to the literature which has accumulated thereon. The judgment of Justice of the Peace for Calcutta v. Oriental Gas Company 8 B.L.R.

433 : 17 W.R. 364 is always referred to. But the attempt made therein to define judgment does, not seem to have prevented in each case in which the question has arisen, lengthy arguments being brought forward to show whether the particular decision before the Court was a judgment or not. After considering very carefully what was set forward as a definition, of "judgment" in that case, I prefer myself to consider each decision as it comes before me, and to form my own opinion whether it is a judgment or not for the purpose of deciding whether an appeal lies. For the purposes of this case to my mind the distinction between decisions and orders thereon which stand by themselves, and decisions on a single issue in a suit, is a very real one. It is not desirable on general principles that a suit should be tried piecemeal, and a decision on an issue to the effect that the trial of the suit should proceed can never to my mind amount to a judgment.

5. If in this case the Judge had decided that the suit was not maintainable and had dismissed the suit, then undoubtedly an appeal would lie against that decision. But in this case the Judge has decided that the suit should proceed, He will then consider the remaining issue in the suit, whether the plaintiff should be granted in the circumstances of the case increased maintenance or not, and when he has decided that question there will be a judgment, against which all the arguments which are now sought to be raised against the decision on this issue can be placed before the Court. We are not shutting out the defendant from any objection which he may eventually be advised to raise against the final decree in the suit. We are merely pointing out that so far nothing has been decided with regard to the rights and liabilities of the parties, there is only a decision that the suit should proceed, and against that decision no appeal lies.

6. The appeal will be dismissed with costs.

7. Cross-objections will be dismissed with costs in the sense that they fall with the appeal.

Coyajee, J.

8. I concur and will add that while it is best not to attempt to define the expression "judgment" as used in Clause 15 of the Letters Patent, a correct guidance on the subject is to be found in the view expressed by Mir Richard Garth, C.J., in Ebrahim v. Fuakhrunnissa Begum 311 Ind. Dec. 337. His Lordship said (page 534 Page of 4 C.--[Ed.]): "I think that word "judgment" means a judgment or decree which decides the case one way or the, other in its entirety, and that it does not mean a decision or order of an interlocutory character, which merely decides some isolated point, not "affecting the merits or result of the entire suit." In this case what the learned Trial Judge has done is to direct that the trial of the suit should proceed. In the circumstances I agree in holding that it is not a "judgment" within the meaning of that word in Clause 15 of the Letters Patent.