

(2010) 08 AHC CK 0372
In the Allahabad High Court

Smt. Renu

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 80, 92

Citation : (2010) 08 AHC CK 0372

Hon'ble Judges : Ferdino Inacio Rebello, C.J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel for the parties.
2. The Learned Counsel for the appellant in this Special Appeal has prayed for followings relief:
 - i) Issue writ of certiorari or any other appropriate writ order or direction in the like nature quashing the order dated 22.7.2010 passed by O.P. No. 1 as contained in annexure No. 1 of the writ petition.
 - ii) Issue writ of mandamus or any appropriate writ, order or direction commanding opposite parties not to implement the order dated 22.07.2010 passed by respondent No. 1 during the pendency of writ petition 5406 (S/S) of 2010 Smt. Renu v. District Magistrate, Unnao and Ors.
 - iii) Make any other order or direction as is deemed just and proper in the facts and circumstances of the case.
3. The appeal is sought against the order dated 06.08.2010, that is not the subject matter of the present appeal. On this ground itself, the present appeal is liable to be dismissed as the order of learned Single Judge is not under challenge before us.
4. The Learned Counsel for the appellant, however points out before us a

judgment of the Co-ordinate Bench of this Court in the case of Ashutosh Shrotriya and Ors. v. Vice Chancellor, 2009 (27) LCD 634, wherein the learned Judge has framed two questions for consideration by the larger Bench of this Court. Two questions framed are as under:

1. Whether when a writ petition is heard by a learned Single Judge and he calls for counter and rejoinder affidavits, but he does not pass any order on the stay application either granting a stay order or refusing the stay order, then, whether the order amounts to refusal of interim order to the petitioner either temporarily or impliedly amounting to a judgment within the meaning of Chapter VIII Rule V of the Rules of the Court, 1952?

2. Whether an order which adversely affects the valuable right of the party by temporary or implied refusal of interim relief shall have trapping of the judgment or not?

5. It appears that the said reference is pending.

6. We may, however quote the following two paragraphs namely; paragraphs 115 and 120, from the judgment of Shah Babulal Khimji Vs. Jayaben D. Kania and Another,

Para 115- Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

Para 120- Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the Letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, Code of Civil Procedure.

(4) An order rescinding leave of the trial Judge granted by him under C. 12 of the Letters patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice u/s 80, bar against competency of the

suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit u/s 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit u/s 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court-fees against the plaintiff.

7. While referring the matter to the Co-ordinate Bench the Reference Court had no occasion to consider the law declared by the Apex Court in Shah Babulal Khimji (Supra).

8. For the reasons earlier set out and the judgment of learned Single Judge is not challenged before us, the present appeal is not maintainable and consequently dismissed.

9. The Registry is directed to place a copy of this judgment before the Hon''ble Chief Justice for constituting a Larger Bench, if still not constituted.