
(2000) 07 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : O.S.A. No. 30 of 1999

Smt. Sushima kishandev kaushal

APPELLANT

Vs

The Council For Tibetan Education

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1(3), Order 16 Rule 14, Order 16 Rule 6, 2(2), 96

Citation : (2000) 2 ShimLC 369

Hon'ble Judges : C.K. Thakker, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : D.D. Sood and Ankush Sood, for the Appellant; Pandit Om Prakash, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Thakker, C.J.—This appeal is filed by the Appellant-Plaintiff u/s 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") read with Clause 10 of the Letters Patent against an order passed by a learned Single Judge of this Court on 13th October, 1999, in OMP No. 441 of 1999 in Civil Suit No. 242 of 1995.

2. The Appellant is the original Plaintiff. He filed a Civil Suit No. 242 of 1995 in this Court against the Respondent-defendant, which awaits final hearing. The case was listed for evidence in rebuttal of the Plaintiff. At that stage, the above application O.M.P. No. 441 of 1999 was filed by the Respondent Defendant under Order 16, Rule 14 of the Code for production of certain documents from Small Causes Court at Bombay, so as to enable the Defendant to effectively and properly cross-examine PW 3 K.D. Kaushal, who was to be examined by the Local Commissioner at Bombay in pursuance of an order dated 27th July, 1999.

3. The documents sought to be produced on record were as under:

1. RAE Suit No. 1389/4279 of 1986 titled: Capt. K.D. Kaushal and Anr. Plaintiff.

v.

Mrs. Bhanu Athiya decided on 10.7.1991 Defendant.

2. LE Suit No. 135/179 of 1981, titled: Mrs. Raj Kumari Bhardwaj Plaintiff.

v.

Mr. K.D. Kaushal and Anr. Defendant.

4. The application was strongly resisted by the Appellant-Plaintiff, inter alia, on the ground that the provisions of Order 16, Rule 14 of the Code had no application as they dealt with suo motu powers of a Court to summon a stranger to a suit as a witness. The application filed by the Defendant, therefore, was not maintainable; the power was discretion nary and could not be exercised, so as to permit the Defendant to fill in lacuna of his case, by producing additional evidence, the application was made by the Defendant at a belated stage without there being any explanation on his part as to why such application could not be made earlier.

5. The learned single Judge, after hearing the parties, allowed the application by observing that the requisite records sought to be summoned to enable the Defendant to effectively and properly cross - examine PW-3 K.D. Kaushal, who was yet to be examined as per the order dated 27th July, 1999. The learned Single Judge also observed that the Defendant did not want the record sought to be summoned to prove his case but it was for effective cross-examination of a Plaintiff's witness. It, therefore, could not be said that the application was belated. It was indicated that though the provision, which was cited was Order 16, Rule, 14, but in letter and spirit, it was under Rule 1(3) read with Rule 6 of Order XVI of the Code. The learned single Judge also opined that as per well settled law, rules of procedure were meant to advance the cause of justice and not to obstruct it. When PW-3 was yet to be examined, no prejudice would be caused to the Plaintiff if the application made by the Defendant would be granted. Finally, the documents, which were sought to be produced were copies of plaint / written statement, etc. The Court was, therefore, satisfied that in the interests of justice, production of such record should not be refused. Accordingly, by the impugned order, the application was granted.

6. The said order is challenged in the present appeal.

7. We have heard Mr. D.D. Sood, Senior Advocate, with Mr. Ankush Sood, learned Counsel for the Appellant and Pt. Om Prakash Sharma, learned Counsel for the Respondent.

8. The learned Counsel for the Appellant submitted that the order passed by the learned Single Judge deserves to be quashed and set aside. According to him, an application filed under Order 16, Rule 14 of the Code was not maintainable and could not have been entertained by the learned Single Judge. He also contended that the Respondent/Defendant wanted to fill in the gaps by producing certain

documents, and that too, at the belated stage. Thus, the Defendant wanted to take undue advantage of his own negligence/carelessness without giving any reason/ground whatsoever as to why a prayer was made for production of documents at such a belated stage. Moreover, the documents in question were not relevant to the controversy raised in the present proceedings and thus no permission could have been granted. In the alternative, contended the learned Counsel for the Appellant, no partly can be allowed to fill in lacuna by abuse of process of law and such an action could not have been permitted by the Court. The power of the Court is discretionary in nature, but if the discretion is not exercised reasonably or in accordance with the well established principle of law, such exercise of power would be bad and deserves to be set aside by the Appellate Court.

9. On all these grounds, the learned Counsel submitted that the appeal deserves to be allowed and the order passed by the learned Single Judge is liable to be quashed and set aside.

10. Pt. Om Prakash Sharma, learned Counsel, on the other hand, raised a preliminary objection to the maintainability of appeal. He submitted that the appeal has been filed u/s 96 of the Code read with Clause 10 of the Letters Patent. Section 96 has no application as there is no decree. The order is also not judgment under Clause 10 of the Letters Patent and, hence appeal is not competent. The appeal, therefore, deserves to be dismissed being not maintainable at law.

11. On merits also, according to Mr. Sharma, no case has been made out by the Appellant considering the facts and circumstances of the case, the learned Judge was of the view that production of certain documents, which were in the nature of certified copies, correctness of which could not be disputed, were permitted to be allowed by exercising discretion and taking into account the fact that the Plaintiffs witness PW-3 was yet to be examined, it cannot be said that the learned Judge could not have passed such order. When the production was allowed in the larger interest of justice, the Appellate Court may not interfere with such discretionary order. For that reason also, the appeal deserves to be dismissed.

12. In our opinion, the preliminary objection raised by the learned Counsel for the Respondent is well founded and deserves to be upheld. It is not disputed and presumably cannot be disputed that the order in question cannot fall within the connotation "decree" as defined in Sub-section (2) of Section 2 of the Act. If it is so, obviously, the provision of Section 96 cannot be invoked. The appeal in question cannot, therefore, fall u/s 96 of the Code.

13. The question then remains whether the order in question can be said to be "judgment" within the meaning of Clause 10 of the Letters Patent. Now, Clause 10 of the Letters Patent of the High Court of judicature at Lahore as applicable to this Court, enables a party to file an intra-court appeal from "judgment" by one

Judge of a High Court to a Division Bench of the same court. If the order in question falls within the term "judgment" under Clause 10 of the Letters Patent, the present appeal is maintainable. If, on the other hand, the order cannot be said to be "judgment", the appeal would not be competent.

14. In *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, the Hon^{ble} Supreme Court considered the relevant provision of the CPC as also Clause 15 of the Letters Patent of Bombay (which is *pari materia* to Clause 10 of the Letters Patent of Lahore applicable to this Court) while considering as to when an appeal would lie against an order passed by a Single Judge of the High Court before a Division Bench falling within the connotation "judgment". Dealing with the relevant provisions of the Code as also referring to several decisions on the point, the Apex Court observed that certain interlocutory orders would amount to "judgment" under Clause 15 whereas certain other orders would not fall within that category. In the case of former, Letters Patent Appeal would be competent whereas in the case of latter, no appeal would lie. Some illustrative cases have also been given by the Court in paragraph 120 clarifying that they were merely illustrative in nature and by no means treated as exhaustive.

In paragraph 114, their Lordships observed:

In the course of the trial, the Trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing, an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the Trial Judge.

15. In our opinion, in the light of the law laid down in *Shah Babu Lai Khimji* an order passed by the learned Judge in the case on hand cannot be said to be "judgment" covered by Clause 10 of the Letters Patent and the appeal is, therefore, not competent as the order is merely interlocutory.

16. In *M/s. Chanana Steel Tubes Pvt. Ltd. v. State of H.P. and Ors.* 1999 (2) Shim. L.C. 452, extension of time was granted for more than one occasion for payment of deficit Court fee. Against the said order, an appeal was preferred and an objection was raised against the maintainability of such appeal. Upholding the objection and observing that the order in question could not be said to be "judgment" within the meaning of Clause 10 of the Letters Patent, a Division Bench of this Court held that the Appellant had no right to file an appeal against the order passed by the learned Single Judge and the appeal was liable to be dismissed only on that ground.

17. In our view, the order in the nature of granting an application to a party to produce documents cannot be said to be "judgment" within the meaning of Clause 10 of the Letters Patent and it is, therefore, not subject to appeal before a Division Bench and hence, appeal is not competent and maintainable.

For the foregoing reasons, in our opinion, the present appeal is not maintainable and deserves to be dismissed only on that ground. We, therefore, dismiss the appeal without observing anything on merits.