
(2002) 01 AP CK 0043
In the Andhra Pradesh High Court
Case No : LPA No. 392 of 2001

Thotakura Ravindra Babu and Another	APPELLANT
Vs	
Thotakura Seshagiri Rao	RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 104(2)

Citation : (2002) 2 ALD 521

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : B. Dhanamjaya, A.A.G., G.V.R. Choudary, K. Mallikarjuna Rao, K. Satyanarayana, V. Parabrahma Sastry, K.V. Satyanarayana, S. Malla Rao, A. Sanjay Kishore, A. Anasuya, Bajrang Singh Thakur, T. Rangaiah, C.V. Nagarjuna Reddy, S.N. Prasad, R. Prabhakar, B.V.S. Sivarama Prasad, M.V. Raja Ram, M.V. Suresh, Harender Pershad, M. Sudhakar Reddy and P. Vindo Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—All these LPAs, except LPA Nos. 394 and 396 of 2001 arise out of different orders passed by learned single Judge of this Court in proceedings under Order 43, Rule 1 of the CPC (for short "the CPC"). LPA Nos.394 and 396 of 2001 arise out of an order passed by the learned single Judge under Order 47, Rule 1 CPC. Since CRP No. 1951 of 2001 is connected to these two LPAs, all these matters are taken together for disposal at the request of the learned Counsel appearing on behalf of the appellants as well as respondents.

2. LPA No. 392 of 2001 is filed against the order made in CMA No. 2727 of 2000 dated 14-10-2001 by a learned single Judge. The said CMA was filed before the learned single Judge under Order 43, Rule 1 of CPC assailing the order dated 20-7-2000 made in IA No. 207 of 2000 in OS No. 25 of 2000 by the senior Civil Judge, Gudivada.

3. LRA (SR) No. 48909 of 2001 is filed against the order made in CMA No. 658 of 2001 dated 13-7-2001 by a learned single Judge of this Court. The said CMA was filed before the learned single Judge of this Court under Order 43, Rule 1 of CPC assailing the order made in IA No. 869 of 2000 in AS No. 161 of 2000 dated 13-2-2001 by the I Additional District Judge, Krishna.
4. LPA (SR) No. 48906 of 2001 is filed against the order made in CMA No. 665 of 2001 dated 13-7-2001 by a learned single Judge of this Court which was filed under Order 43, Rule 1 CPC assailing the order made in IA No. 868 of 2000 in AS No. 160 of 2000 dated 13-2-2001 by the I Additional District Judge, Krishna.
5. LPA (SR) No. 49974 of 2001 is filed against the order dated 19-9-2000 made by the learned single Judge of this Court in CMA No. 2022 of 2000 which was filed under Order 43, Rule 1 CPC assailing the order dated 12-6-2000 made in IA No. 421 of 2000 in OS No. 474 of 2000 by the II Senior Civil Judge, City Civil Court, Hyderabad.
6. LPA (SR) No. 49978 of 2001 is filed against the order dated 19-9-2000 made by the learned single Judge of this Court in CMA No. 2020 of 2000 which was filed under Order 43, Rule 1, of CPC against the order made in IA No. 406 of 2000 in OS No. 474 of 2000 dated 12-6-2000 by the II Senior Civil Judge, City Civil Court, Hyderabad.
7. LPA (SR) No. 73203 of 2001 is filed assailing the order dated 15-10-2001 made by a learned single Judge of this Court in CMA No. 2173 of 2001 which was filed under Order 43, Rule 1 of CPC against the order in IA No. 25 of 2001 in OS No. 16 of 2001 made by the III Additional Senior Civil Judge, City Civil Court, Secunderabad.
8. LPA (SR) No. 7799 of 2001 is filed against the order dated 5-12-2001 made by a learned single Judge of this Court in CMA No. 1946 of 2000 which was filed under Order 43, Rule 1 of CPC assailing the order dated 29-2-2000 made in IA No. 801 of 1995 in OS No. 1935 of 1987 by the I Senior Civil Judge, City Civil Court, Hyderabad.
9. LPA No. 287 of 2001 is filed against the order dated 22-6-2001 made by a learned single Judge of this Court in CMA No. 108 of 2001 which was filed under Order 43, Rule 1, of CPC against the order made in LA No. 640 of 1999 in OS No. 288 of 1999 dated 7-11-2000 by the I Additional Senior Civil Judge, Ranga Reddy District.
10. LPA No. 289 of 2001 is filed against the order dated 13-6-2001 made by a learned single Judge of this Court in CMA No. 1352 of 2001 which was filed under Order 43, Rule 1 of CPC against the order made in LA No. 814 of 2001 in OS No. 168 of 2001 dated 28-5-2001 by the I Additional District Judge, Guntur.
11. LPA No. 296 of 2001 is filed against the order made by a learned single Judge of this Court dated 19-7-2001 in CM A No. 1330 of 2001 which was filed under Order 43, Rule 1 of CPC against the order made in IA No. 783 of 2000 of

OS No. 443, of 2000 dated 25-4-2001 by the I Additional senior Civil Judge, Vijayawada.

12. LPA No. 380 of 2001 is filed against the order dated 27-6-2001 made by a learned single Judge of this Court in CMA No. 1509 of 2001 which was filed under Order 43, Rules 1 and 2 CPC against the order made in IA No. 506 of 2000 in OS No. 1215 of 1998 dated 6-6-2001 by the VII Senior Civil Judge, City Civil Court, Hyderabad.

13. LPA No. 400 of 2001 is filed against the order dated 17-9-2001 made by a learned single Judge of this Court in CMA No. 2114 of 2001 which was filed under Order 43, Rule 1 of CPC against an order made in IA No. 1000 of 2001 in OS No. 88 of 2001 dated 12-7-2001 by the II Additional Chief Judge, City Civil Court, Hyderabad.

14. CRP No. 1951 of 2001 is filed against the order dated 18-4-2001 made in IA No. 7001 of 2001 which was filed u/s 151 CPC in OS No. 110 of 2001, by the II Additional Chief Judge, City Civil Court, Hyderabad.

15. LPA No. 394 of 2001 is filed against the order made in Rev. CMP No. 4636 of 2001 filed under Order 47, Rule 1 CPC in CMA No. 2020 of 2000 dated 19-7-2001 by a learned single Judge of this Court refusing to review the order dated 19-9-2000 made in CMA No. 2020 of 2000 which was filed under Order 43, Rule 1 CPC.

16. LPA No. 396 of 2001 is filed against the order made in Rev. CMP No. 1342 of 2001, filed under Order 47, Rule 1 of CPC, dated 19-7-2001 seeking to review the order dated 19-9-2000 made in CMA No. 2021 of 2000 which was filed under Order 43, Rule 1 of CPC.

17. Since, a common question of law is urged before us about the maintainability of these LPAs against the order made by a learned single Judge arising out of the proceedings under Order 43, Rule 1 and Order 47, Rule 1 CPC, common arguments are heard in all these LPAs on behalf of the appellants as well as on behalf of the respondents and these matters are decided by the following common judgment.

18. On behalf of the appellants in LPA(SR) Nos.48909 and 48906 of 2001, Sri K.V. Satyanarayana, learned Counsel, led arguments which are adopted by the other Counsel appearing on behalf of the appellants in other LPAs. On behalf of the respondents, Sri V. Parabrahma Sastri learned Counsel for the respondents in LPA(SR) No. 48909 of 2001, made main submissions, learned Additional Advocate-General appearing on behalf of the respondents in LPA (SR) No. 49974 of 2001 and in CRP No. 1951 of 2001 and Sri Movva Chandrasekhara Rao, learned Counsel for some of the respondents, also made elaborate submissions opposing the LPAs.

19. Leading the arguments on behalf of the appellants, Sri K.V. Satyanarayana, Counsel for the appellants in LPA (SR) Nos. 48909 and 48906 of 2001 mainly

contended that though there is a specific bar engrafted under Sub-sections (1) and (2) of Section 104 of CPC for filing a further appeal against an order passed under Order 43, Rule 1 CPC, but in view of the law laid down by Four Judges Bench of the Supreme Court in Union of India (UOI) Vs. Mohindra Supply Company, , and a combined reading of Sections 4 and 104 of CPC results in saving the express provisions in a Special Law which enables a party to file an appeal. According to the learned Counsel, the Letters Patent Provisions are a Special Law and therefore, the embargo as provided under Sub-section (2) of Section 104 of CPC has no application for preferring an appeal under the Letters Patent Provisions. In support of his contentions, learned Counsel has taken us to various decisions in Reliance Industries Limited v. Pravinbhai Jasbhai Patel 1997 (8) Sup 52, Employer in relation to Management of Central Mine Planning and Design Institute Limited v. Union of India 2001 (1) Sup 344, and in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, According to the Counsel, Full Bench of Andhra Pradesh High Court in M. Srinivas Vs. Jawaharlal Nehru Technological University, , clarified the position in para 24 of the said judgment on the implications of the ratio laid down by the Supreme Court in Shah Babulal Khimji 's case (supra) and held that as against an order passed under Order 43, Rule 1 of CPC, a further a appeal is maintainable under Clause 15 of the Letters Patent, as the judgment rendered in the proceedings under Order 43 Rule 1 of CPC is a judgment within the meaning of Clause 15 of Letters Patent. He further contended, as held by the Supreme Court in Chandra Kanta Sinha v. Oriental Insurance Company Limited 2001 (4) Sup 302, the embargo as provided under Sub-section (2) of Section 104 of CPC is not an obstacle for filing an appeal, under the Letters Patent provisions against the orders passed by the learned single Judge in the proceedings under Order 43, Rule 1 or Order 47, Rule 1 CPC. Learned Counsel also took pains taking us to several paragraphs from these decisions and contended that on an analysis of these decisions, the emerging principle is that even if an order is passed by the learned single Judge under the provisions of Order 43, Rule 1 or Order 47, Rule 1 of CPC, a further appeal under Letters Patent is maintainable before the Division Bench. Learned Counsel also tried to distinguish the two decisions of the Supreme Court in M/s. New Kenilworth Hotel (P) Ltd. Vs. Orissa State Finance Corporation and others, , and in Resham Singh Pyara Singh Vs. Abdul Sattar, , submitting that the Supreme Court in these two decisions has not elaborately discussed the implications arising out of Order 43 Rule 1 has the Letters Patent clauses and as such, the earlier Four Judges decision of the Supreme Court in Union of India's case (supra) shall prevail over these two decisions (supra). In view of this legal position. Counsel contended, the further appeal is permissible to a Division Bench against the order of the learned single Judge arising out of proceedings under Order 43, Rule 1 or Order 47, Rule 1 of CPC. Counsel, therefore, submitted that the preliminary objections raised by the Registry as well as the Counsel for the respondents with regard to the maintainability of these LPAs cannot be sustained and prayed this Court to decide the appeals on merits after admitting them.

20. On behalf of the respondents, leading the arguments opposing the LPAs, Sri V. Parabrahma Sastri, learned Counsel for the respondents in LPA (SR) No. 48909 of 2001 submitted that Section 104(1) of CPC provides orders from which appeals would lie. Order 43, Rule 1 of CPC provides the category of orders against which appeals lie. Clause (r) of Rule 1 of Order 43 further provides that an appeal would lie against an order passed in a proceedings arising out of Order 39, Rules 1, 2, 2-A, 4 and 10 of CPC. Thus, according to the learned Counsel, the orders passed under Order 39, as indicated above, are appealable under Order 43, Rule 1 CPC. Counsel submitted that Sub-section (2) of Section 104 of CPC further imposes an embargo stipulating that no appeal shall lie from any order passed in an appeal except as provided under Sub-section (1) of Section 104 and Order 43, Rule 1 of CPC. It is, therefore, submitted that when there is a specific embargo under Sub-section (2) of Section 104 of CPC, the present LPAs are not maintainable even though the Letters Patent is a special enactment. Elaborating his submissions, learned Counsel submitted that the ratio laid down by the Four Judge Bench of the Supreme Court in *Union of India's* case (supra) arises out of Arbitration proceedings and has nothing to do with the provisions of the CPC and as such, the principle laid down in the said decision has no application to the instant case. Learned Counsel strongly reliance on the decisions of the Supreme Court in *New Kenilworth Hotel's* case (supra), *Hemlata Panda and Others Vs. Sukuri Dibya and Others*, , and submitted that these decisions are directly on the question arising out of Order 43, Rule 1 CPC and therefore, as held by the Supreme Court in these decisions, no appeal under Letters Patent would lie to the Division Bench against the orders passed by the learned single Judge in the proceedings under Order 43, Rule 1 CPC or under Order 47, Rule 1 of CPC. Distinguishing the ratio laid down by the Supreme Court in *Shah Babulal Khimji's* case (supra), learned Counsel submitted that though a Full Bench of this Court in *Srinivas's* case (supra) while distinguishing the view taken by the Supreme Court in *Shah Babulal Khimji's* case (supra) held that a Letters Patent Appeal would lie against an order of the single Judge passed under Order 43, Rule 1 of CPC, but according to the learned Counsel, this view of the Full Bench of this Court in the decision (supra) is incorrect. It is submitted that the view of the Supreme Court in *Shah Babulal Khimaji's* case (supra) has been clarified by the Supreme Court in *M/s. New Kenilworth Hotel's* case (supra) at para 13 of the said decision. Learned Counsel submitted that in view of the ratio laid down by the Supreme Court in the decisions (supra), the LPAs are liable to be dismissed as not maintainable.

21. Sri Movva Chandrasekhara Rao, learned Counsel appearing on behalf of some of the respondents, while supporting the view of Sri Parabrahma Sastry, submitted that Clause 15 of the Letters Patent is not independent but as provided under Clause 44 of Letters Patent, it is subject to the other legislation's and when Sub-section (2) of Section 104 of CPC provides that no further appeal lies, the present LPAs are not maintainable. In support of his contention that the provisions of Clause 15 of Letters Patent is subject to other legislations, as

provided under Clause 44, learned Counsel placed reliance on a decision of the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd.* (J. and P. Coats Ltd., Assignee), .

22. Learned Additional Advocate-General, representing some of the respondents has also submitted elaborate arguments on the question of maintainability of these LPAs. It is argued that when the decisions cited 7 and 8 *supra* are directly on the point, they are to be followed and the other decisions wherein some passing observations are made have to be ignored when they are not directly on the point. According to him, the decision which are directly on the point are binding on Courts under Article 141 of the Constitution of India. He further submitted that the earlier decisions of the Supreme Court in *Union of India's* case (*supra*) has been clarified by the Supreme Court in the latter decisions in the year 1981 (*supra*), and the view taken in the later decision has been further clarified in *Kenil Worth Hotel's* case (*supra*) wherein the Supreme Court held that as against an order passed by a single Judge in proceedings arising out of Order 43, Rule 1 of CPC, no further appeal would lie before a Division Bench under Letters Patent Provisions.

23. In view of these submissions, the point that arises for consideration is whether a further appeal under Clause 15 of the Letters Patent would be maintainable before a Division Bench against an order passed by the single Judge exercising powers under Order 43, Rule 1 of CPC?

24. The facts in issue no doubt disclose that the orders passed by the lower Courts are challenged before a learned single Judge of this Court in CMAs under Order 43, Rule 1 of CPC. The learned single Judges of this Court before whom the CMAs fell for consideration, disposed of the same either granting or rejecting the relief sought for in those CMAs, against which these LPAs were filed. However, LPA Nos.394 and 396 of 2001 were filed against the order passed by the learned single Judge in Review CMPs which were filed under Order 47, Rule 1 CPC declining to review the order passed in CMAs which were filed under Order 43, Rule 1 of CPC.

25. The decision of the Supreme Court in *Union of India's* case (*supra*), though rendered by a Fourth-Judge Bench, but that matter arises out of Arbitration proceedings and not under the provisions of the Civil Procedure Code. The said decision was later considered by the Supreme Court in the decision (*supra*) and it was categorically held that no further appeal under Letters Patent lie from the matter arising out of Order 43, Rule 1 CPC. Therefore, when the earlier decision of the Supreme Court (*supra*) is clarified by the Supreme Court subsequently in the decision (*supra*), the later decision would bind the Courts which view is reflected in the decisions of the Full Bench of this Court in *Sakinala Harinath v. State of A.P.* 1993 (6) SLR 1. However, a Full Bench of this Court in the decision (*supra*) held that LPA does lie against an order arising out of proceeding under Order 43, Rule 1 CPC solely clarifying the position of law laid down in *Shah Babulal Khimji's* case (*supra*).

26. Though it is submitted on behalf of the appellants that when the decision of the Supreme Court (supra) has been clarified by the Full Bench decision of this Court (supra) holding that a Letters Patent Appeal does lie in matters arising out of Order 43, Rule 1 CPC, we must say without any hesitation, this view cannot be countenanced in view of the later decisions of the Supreme Court (supra) wherein the Supreme Court has considered its earlier view in the decision (supra) and has categorically held that the bar provided under Sub-section (2) of Section 104 of CPC prohibits a further appeal under Letters Patent before the Division Bench as against the orders of a learned single Judge in a matter arising out of Order 43, Rule 1 CPC.

27. The Supreme Court in the decision (supra) has affirmed its earlier view taken in the decision supra, and held that the view taken in these decisions need not be altered.

28. Though the learned Counsel appearing on behalf of the appellants in support of their submission that LPA is maintainable against an order of the learned single Judge passed under Order 43, Rule 1 of CPC, placed reliance on two decisions of the Supreme Court (supra), we are not persuaded to agree with the submissions made in this regard. A reading of para 10 of the decision of the Supreme Court (supra), it is clear that the Supreme Court has considered the earlier view taken by the Supreme Court in M/s. New Kenil Worth Hotel's case (supra) and it is categorically held that taking recourse to a decision of the Supreme Court in M/s. New Kenil Worth Hotel's case (supra) by the respondent is of no avail to them in the facts of the case. Thus, it would appear to us, that the later decision of the Supreme Court (supra) has also affirmed the view taken by the Supreme Court in the decisions (supra).

29. Clause 15 of the Letters Patent is subject to the other legislations made from time to time as is reflected under Clause 44 of the Letters Patent. In the decision (supra), it has been clarified that Clause 15 of the Letters Patent is not independent but it would be subject to the other legislation's made from time to time as provided under Clause 44 of the Letters Patent. Therefore, in view of the restrictions imposed on Clause 15 of the Letters Patent through Clause 44, the embargo provided under Sub-section (2) of Section 104 of CPC prohibiting further appeal against an order passed under Order 43, Rule 1 CPC, is applicable to Clause 15 of Letters Patent and as such, an appeal under Clause 15 of the Letters Patent to a Division Bench against the order of the learned single Judge passed under Order 43, Rule 1 of CPC does not lie.

30. In view of the decision of the Supreme Court in the decisions (supra), we are of the view that no further appeal under Clause 15 of the Letters Patent would lie before a Division Bench against an order passed by the single Judge in a matter arising out of Order 43, Rule 1 of CPC.

31. Insofar LPA Nos.394 and 396 of 2001 are concerned, they are filed against the order of the single Judge made in Rev. CMP under Order 47, Rule 1 of CPC. It

is noticed that these Rev. CMPs are filed in CMPs which were filed under Order 43, Rule 1 of CPC. The said Rev. CMPs were rejected by the learned single Judge declining to review the orders passed in the CMAs. Having regard to our discussion that a further appeal under Clause 15 of the Letters Patent does not lie to a Division Bench against the order passed under Order 43, Rule 1 CPC by a learned single Judge, we hold that, as against the order passed by the learned single Judge in Rev. CMP under Order 47, Rule 1 of CPC, LPA does not lie to a Division Bench. We are also supported in this regard by a Division Bench decision of this Court in V.V. Narayana Chetty v. C. Radhakrishna Gupta 1988 (2) ALT 146, wherein it is held that LPA does not lie at all against an order passed in review petition when LPA does not lie against a main order itself which was sought to be reviewed.

32. For the above reasons, all the LPAs shall stand dismissed at the stage of admission itself

33. Since we have dismissed the LPAs holding that they are not maintainable against an order of the learned single Judge passed under Order 43, Rule 1 of CPC, the revision petition in CRP No. 1951 of 2001 has to be delinked from this batch. Accordingly, the said CRP is deleted from this Batch and the Registry is directed to post the same before the appropriate Bench, which has jurisdiction to admit the CRPs .