

(1964) 02 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 59-D of 1960

Ude Ram Sewa Ram and Others

APPELLANT

Vs

Shri Gopi Chand and Others

RESPONDENT

Date of Decision : 19-02-1964

Acts Referred:

Arbitration Act, 1940 — Section 39, 39(1), 39(2)
Civil Procedure Code, 1908 (CPC) — Section 100
Delhi and Ajmer Rent Control Act, 1952 — Section 13(5), 34, 34(1), 34(2)
Government of India Act, 1915 — Section 71, 72

Citation : (1964) 02 P&H CK 0017

Hon'ble Judges : D. Falshaw, C.J.; Mehar Singh, J

Bench : Division Bench

Advocate : S.N. Chopra and Triyuggi Narayan, for the Appellant; R.S. Narula and R.L. Tandon, for the Respondent

Judgement

D. Falshaw, C.J.—This is an appeal filed under Clause 10 of the Letters Patent against the order of Grover, J. accepting an appeal filed by landlords and setting aside an order of the trial Court by which the defence of the tenants in the landlords' ejectment suit was not struck out u/s 13(5) of the Delhi and Ajmer Rent Control Act of 1952.

2. The main dispute centered round the question whether an order by which the tenants were called on to deposit rent during the pendency of the case was passed in the presence of the parties on the 7th of October 1955 or on the 14th of October 1955, which was not a date for which a hearing in the suit had been fixed in the presence of the Plaintiffs only. The date in the record appeared to have been tampered with, but it was held by the learned Subordinate Judge who had taken the place of the Presiding Officer who passed the disputed order that the order was passed on the 14th of October in the absence of the Defendants. After considering all the relevant circumstances at considerable length the learned Single Judge came to the conclusion that the order was passed on the 7th of October 1955 in the presence of both the parties. He found, however,

that certain other points which arose in the matter had not been decided by the trial Court to which the case was sent back for decision on such points.

3. On behalf of the landlords two preliminary objections have been raised, firstly that no appeal lies against the order of the Single Judge under Clause 10 of the Letters Patent and secondly that in any case the order is not a judgment within the meaning of Clause 10 since it left certain points still to be decided on remand by the lower Court. Under the Delhi and Ajmer Rent Control Act of 1952 cases for ejectment and other matters arising under the Act were to be heard by the ordinary civil Courts and appeals were provided for in Section 34 which reads:

(1) Any person aggrieved by any decree or order of a Court passed under this Act may, in such manner as may be prescribed, prefer an appeal--

(a) to the Court of the Senior Subordinate Judge, if any, where the value of the case does not exceed two thousand rupees: Provided that where there is no Senior Subordinate Judge the appeal shall lie to the District Judge.

(b) to the Court of the District Judge where the value of the case exceeds two thousand rupees but does not exceed ten thousand rupees, and

(c) to the High Court, where the value of the case exceeds ten thousand rupees.

(2) No second appeal shall lie from any decree or order passed in any case under this Act.

In the present case as the value of the case exceeded Rs. 10,000/- the first appeal lay to this Court u/s 34(1)(c) and it is contended that the bar against any second appeal contained in sub-section (2) will apply even to an appeal filed under Clause 10 of the Letters Patent. In this connection reliance is mainly placed on the decision of the Supreme Court in Union of India (UOI) Vs. Mohindra Supply Company, in which somewhat similar provisions of the Arbitration Act were considered. In that case there was an arbitrator's award in favour of the company against the Government and when the award was filed in Court the objections of the Government were dismissed and the Court refused to set aside the award. The Government filed an appeal against that order in this Court u/s 39(1)(vi) of the Arbitration Act. I happened to hear this appeal, which I accepted, and against my order an appeal was filed under Clause 10 of the Letters Patent. The objection was raised in that appeal" that no Letters Patent Appeal was competent. This point was referred to a Full Bench which held that notwithstanding the Bar contained in Section 39(2) of the Arbitration Act an appeal lay under Clause 10 of the Letters Patent and the appeal was then heard and accepted on the merits by a Division Bench.

4. The matter came before the Supreme Court by way of an appeal against that order. At this stage the provisions of Section 39 of the Arbitration Act may be set out. They read:

(1) An appeal shall lie from the following orders passed under this Act (and from

no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order: An" order:

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

The words "Supreme Court" in this sub-section were apparently substituted for the words "His Majesty in Council, by the Adaptation of Laws Order of 1950. The relevant provisions of the Letters Patent may also be set out. Clause 10 reads:

And we do further ordain that an appeal shall lie to the said High Court. from the judgment (not being a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction...) of one Judge of the High Court....

Clause 37 reads:

And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council u/s 71 of the Government of India Act, 1915, and also of the Governor-General in cases of emergency u/s 72 of that Act, and may be in all respects amended and altered thereby.

5. The learned Judges of the Supreme Court were considering the effect of Section 39(2) of the Arbitration Act and those two clauses of the Letters Patent. Their conclusions are summed up as follows:

Where a Single Judge Of the Punjab High Court disposes of an appeal u/s 39(1) of the Arbitration Act, 1940, there is no further right of appeal under Clause 10 of the Letters Patent of the High Court against the order of the Single Judge.

Section 39(2) of the Arbitration Act, expressly prohibited a "second appeal from

an order passed in appeal u/s 39(1) except an appeal to the Supreme Court. There is clear indication inherent in sub-section (2) that the expression "second appeal" does, not mean appeal u/s 100 of the Code of Civil Procedure. The expression "second appeal" means a further appeal from an order passed in appeal u/s 39(1) and not an appeal u/s 100 Civil Procedure Code.

By Clause 10 of the Letters, Patent of the Punjab High Court a right to appeal except in the cases specified from, one Judge of the High Court to a Division Bench is expressly granted. But the Letters Patent are declared by Clause 37 subject to the legislative power of the Governor-General in Council and also of the Governor in Council under the Government of India Act, 1915, and may in all respects be amended or altered in exercise of legislative authority. u/s 39(1) Arbitration Act, an appeal lies from the orders specified in that sub-section and from the others. The Legislature has plainly expressed itself that the right of appeal against orders passed under the Arbitration Act may be exercised only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in Section 39(1) a right to appeal from a judgment which may otherwise be available under the Letters Patent is restricted, there is no ground for holding that clause (2) does not similarly restrict the exercise of appellate power granted by the Letters Patent. If the expression "second appeal" includes an appeal under the Letters Patent, it would be impossible to hold that notwithstanding the express prohibition, an appeal under the Letters Patent from an order passed in appeal under sub-section (1) is competent.

There does not appear to me to be any difference whatever in principle between the relevant provisions of Section 39 of the Arbitration Act and of Section 34 of the Delhi and Ajmer Rent Control Act of 1952. The only differences between the provisions of these sections are superficial and do not appear to me to affect the main point in any way. These differences are that whereas in sub-section (1) of Section 39 of the Arbitration Act the kinds of order against which a first appeal lies at all are restricted, u/s 34(1) of the Rent Control Act of 1952 any order passed by a Court under the Act is made appealable, and that in sub-section (2) of Section 39 of the Arbitration Act it was made clear that the bar against a second appeal did not apply to an appeal at first to the Privy Council, and later to the Supreme Court, the exemption of such an appeal from the bar was not expressed in sub-section (2) of Section 34 of the Rent Control Act.

6. I do not consider that the first of these distinctions makes any difference whatever to the principle laid down by the Supreme Court that a "second appeal" in this context does not mean a second appeal u/s 100 of the Code of Civil Procedure, but means a further appeal from an order passed in appeal under sub-section (1) and as for the omission in sub-section (2) of Section 34 of the Rent Control Act of 1952 to make it clear that it is not meant to bar an appeal to the Supreme Court, which is governed by special provisions in the CPC and the Constitution, I think it may well be left to the Supreme Court itself to decide

whether Section 34(2) is a bar to such an appeal. The point certainly has no bearing on the question whether a second appeal mentioned in sub-section (2) also includes an appeal under Clause 10 of the Letters Patent.

7. In the circumstances I am of the opinion that no appeal lies under Clause 10 of the Letters Patent against the order of a Single Judge of this Court passed in appeal u/s 34(1)(c) of the Delhi and Ajmer Rent Control Act of 1952 and therefore the present appeal must be dismissed. Since the decision of the Supreme Court is later than the decision of the learned Single Judge, the parties may be left to bear their own costs.

Mehar Singh, J.

8. I agree.