

(1982) 02 PAT CK 0003
In the Patna High Court
Case No : S.A. No. 646 of 1980

Upendra Kumar Joshi

APPELLANT

Vs

Kesoram Industries and Cotton Mills Ltd.

RESPONDENT

Date of Decision : 08-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Companies Act, 1956 — Section 155(4)

Citation : (1983) 54 CompCas 1

Hon'ble Judges : S.K. Jha, J;Nagendra Prasad Singh, J;Hari Lal Agrawal, J

Bench : Full Bench

Advocate : Party in person, for the Appellant; None, for the Respondent

Judgement

1. This appeal has been preferred against the judgment and order of a learned single judge of this court. When the matter was placed before the Division Bench in appeal, Mr. U.K. Joshi, appearing in person, argued that the matter needed to be decided by a Full Bench of this court in terms of Section 155(4)(b) of the Companies Act, 1956 (hereinafter to be referred to as "the Act"). The question with regard to the interpretation of that statutory provision has been referred to this Full Bench for decision. Section 155(4)(b) reads thus :

" (4) From any order passed by the court on the application, or on any issue raised therein and tried separately, an appeal shall lie on the grounds mentioned in section 100 of the Code of Civil Procedure, 1908--.....

(b) if the order be passed by a single judge of a High Court consisting of three or more judges, to a Bench of that High Court."

2. The sole question for determination is as to whether this statutory provision is meant for a decision of an appeal against the order passed by a single judge of the High Court to be heard by a Division Bench or a Bench consisting of the Full Court. Mr. Joshi's contention is that it should be heard by the Full Court. We do not think that the contention is justified in law. The language of the statute is

very clear and explicit. It says that the order appealed against should be the subject-matter of appeal before a Bench of the High Court consisting of three or more judges. Mr. Joshi very ingeniously argued that having regard to the punctuation marks and the anomalies that would occur in cases where the High Court does not consist of more than two judges, they would clearly lead to a discrimination, for, in such an event, no appeal shall lie at all. That, according to him, would lead to an absurd situation. He relied upon quite a number of decisions with regard to the consequences flowing from the punctuation marks and the law regarding the absurd interpretation of such statutory provisions. We are, however, not inclined to go into those questions. The language, as we have already stated above, is clear and unequivocal. The golden rule of interpretation, well acknowledged throughout, is the principle of construction *ut res magis valeat quam pereat*, which means that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. The further rule of interpretation of the statute is that a construction which would leave without affecting any part of the language of a statute will normally be rejected. Reference is made in this connection to the cases of *Salmon v. Duncombe* [1886] 11 App Cas 627, *Glamorgan County Council v. Carter* [1963] 1 WLR 1 (QB), *Wynn v. Skegness Urban District Council* [1967] 1 WLR 52 (Ch D). And, yet another rule of interpretation which has been made by the House of Lords in the case of *Governor & Company of the Bank of England v. Vagliano Brothers* [1891] AC 107 (HL), at pages 144-145, which has laid down that the proper course in the first instance is to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law. This being the settled principle of law, on the express language of Section 155(4)(b) of the Act, as extracted above, the inference is irresistible, namely, that where a High Court consists of three or more judges, the appeal against the judgment and order of a learned single judge shall lie before a Bench of that court. A Bench of the court does not mean the Full Court as is well known and well settled. A Bench of a High Court, when we talk with regard to an appeal from the judgment or order of a single judge, means a Division Bench. We, therefore, have no hesitation in holding that such an appeal shall lie before a Division Bench and not a Full Court. We are not concerned with any High Court consisting of less than three judges. If the intention of the Legislature were to debar an appeal from a judgment of a single judge to a Division Bench in a High Court consisting of less than three judges, it would necessarily follow that there would be no appeal in such cases. The logic is obvious enough. Where a High Court consists of less than three

judges, the judgment of a single judge appealed against would be necessarily heard by a Division Bench which would include the judge who had decided the matter. That would certainly be a ground for bias. If the Legislature has not so laid it down, it is none of the part of the court to fill up the casus omissus. It is well settled that an Act ought not to be so construed as to convict the Legislature of having used an expression which would be absurd. The principle of casus omissus is not to be created or applied by the court as referred to in *Robert Wigram Crawford v. Richard Spooner* [1846] 6 Moo (PC) 1; 14 MIA 179, *Keyes v. Elkins* [1864] 5 B & S 240 ; *Mersey Docks & Harbour Board v. Henderson Brothers* [1888] 13 App Cas 595 (HL) , *Lord Howard De Walden v. Inland Revenue Commissioners* [1948] 2 All ER 825 ; 30 TC 345 and *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur* ,

3. In the alternative Mr. Joshi also tried to impress upon us that even if the Full Court may not hear the appeal, at least three or more judges of the court should sit in appeal against the judgment. The reason which we have already given will apply equally to either the Full Court or a Bench of three or more judges.

4. In the circumstances, we do not find any merit in the contention raised by the appellant. The appeal, according to us, on a construction of Section 155(4)(b) of the Act, shall lie to a Division Bench consisting of two judges.