

Shri Durga Prasad and Another

Vs

The Banaras Bank Limited

Civil Appeal No. 569 of 1960

(CJI B.P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

21.12.1962

JUDGMENT

SHAH, J. -

The Banaras Bank Ltd. - hereinafter called 'the Bank' was directed to be wound up by order of the Allahabad High Court. A committee of inspection was appointed under s. 178-A of the Indian Companies Act, 1913 to act with the Official Liquidator, and one of the members of the Committee was Durga Prasad the first appellant in this appeal. The Official Liquidator advertised for sale two houses which formed part of the assets of the Bank. Roshan Lal the second appellant made an offer to purchase the two houses for Rs. 18,000/-. This offer was accepted by the Official Liquidator and with the sanction of the Court the two houses were sold to Roshan Lal on August 2, 1941. Roshan Lal thereafter transferred the houses to Durga Prasad reciting in the deed that the latter was "the real owner" of the houses and that the sale deed from the Official Liquidator was obtained by him 'benami' for Durga Prasad. On coming to learn about this conveyance the Official Liquidator moved the High Court of Allahabad for an order that the sale be declared null and void and that Durga Prasad be called upon to surrender the two houses and to re-transfer the same to the Bank. The High Court held that the sale deed was obtained by Durga Prasad who was the real purchaser, that he had suppressed his interest in the purchase, and that being a member of the committee for inspection, qua the Bank he occupied the position of a trustee and was on that account precluded from buying the property of the Bank. The High Court accordingly directed Durga Prasad to convey the houses to the Official Liquidator of the Bank. This order was confirmed in appeal under cl. 10 of the Letters Patent by a Division Bench of the High Court. The High Court, however certified the case under Art. 33(1) of the Constitution for appeal to this Court. The High Court observed :

"It is not in dispute that the judgment of this Court involves directly or indirectly a claim respecting property of a value of not less than Rs. 20,000/- and, in view of the decision of this Court in *Shri Deoki Nandan v. State of Uttar Pradesh* (A.I.R. 1959 All. 10.), the applicants are entitled as of right to a certificate under Article 133(1) of the Constitution without an additional certificate that the case gives rise to a substantial question of law. The requisite certificate will accordingly issue."

At the hearing before this Court counsel for the Official Liquidator submitted that the appeal is incompetent, for the High Court had no jurisdiction to grant the certificate under Art. 133(1)(a) of the Constitution without certifying that the appeal involved some substantial question of law. In our view this contention must succeed.

In *Deoki Nandan v. State of Uttar Pradesh* (A.I.R. 1959 All. 10.) the Allahabad High Court held :

"The words 'the Court immediately below' within the meaning of cl. (1) of Art. 133 of the Constitution must be a court other than the High Court. A single Judge of a High Court is not a court subordinate to the High Court.

An appeal against an order of an appellate Bench of the High Court dismissing an appeal from an order of a single Judge of the Court on its original side rejecting a petition under Art. 226 of the Constitution lies as a matter of right under Art. 133(1) of the Constitution, if the claim is in respect of property of a value in excess of Rs. 20,000/- and it is not necessary that the case should give rise to a substantial question of law."

But the expression 'court immediately below' in Art. 133(1) has not the same connotation as the expression 'court subordinate to the High Court.' In *Toolsey Persaud Bhuckt v. Benayek Misser* ((1896) L.R. 28 I.A. 102.), the Privy Council appears to have expressed the view that a single Judge of a High Court trying an original proceeding was a court immediately below the High Court hearing an appeal under the Letters Patent from his judgment and therefore an appeal under s. 596 of the Code of Civil Procedure Act XIV of 1882 (of which the terms were in substance identical with the terms of Art. 133(1)) could be certified for appeal to the Privy Council only if a substantial question of law was involved. The Judicial Committee observed :

"Their Lordships think that no question of law, either as to construction of documents or any other point, arises on the judgment of the High Court, and that there are concurrent findings of the two Courts below on the oral and documentary evidence submitted to them. That being so the present appeal cannot be entertained."

In *Probhawati Kanwar v. Panmal Lodha* ((1941) 45 Cal. W.N. 1002.), the High Court of Calcutta held that an appeal to the Privy Council cannot be certified if the High Court confirms the judgment of a single Judge trying an original proceeding, unless it involves a substantial question of law. In a recent case *Ladli Prasad Jaiswal v. The Karnal Distillery Company Ltd.* ([1964] Vol. 1 S.C.R. 270.), this Court held that a single Judge hearing a second appeal under s. 100 of the Code of Civil Procedure, 1908 is for purposes of Art. 133(1) the Court immediately below a Division Bench of the High Court hearing an appeal against his judgment under the Letters Patent. It was observed in that case that the expression 'Court immediately below' used in Art. 133(1)(a) does not mean Court subordinate to the High Court. "A Court subordinate to the High Court is a Court subject to the superintendence of the High Court, whereas a Court immediately below is the Court from whose decision the appeal has been filed." In that case the Attorney-General appearing for the respondents conceded that a single Judge of a High Court trying a suit or proceeding as a court of original jurisdiction was a court immediately below the High Court hearing an appeal from his decision - and it was observed in the Judgment of this Court that the concession was properly made.

In the appeal before us, the judgment of the High Court affirms the judgment of the single Judge and the High Court has not certified that the decision appealed from involves any substantial question of law. The appeal cannot accordingly be entertained. Counsel for the appellant requested that in any event special leave to appeal under Art. 136 of the Constitution be granted. But we are of the view, having regard to all the circumstances, that this is not a fit case for granting leave to appeal.

The appeal is therefore dismissed. There will be no order as to costs.

Appeal dismissed.

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