

Chhitarmal

Vs

M/S. Shah Pannalal Chandulal

Special Leave Petition (Civil) No. 890 of 1964

(M. Hidayatullah, J. C. Shah, S. M. Sikri, K. N. Wanchoo, J. R. Madholkar JJ)

14.01.1965

JUDGMENT

SHAH, J. -

The petitioner applies for special leave to appeal under Art. 136 of Constitution, against the judgment of the High Court of Rajasthan dated December 16, 1963 in Civil First Appeal No. 54 of 1956 on two grounds :

(1) that the judgment of the High Court involves a claim or question respecting property of not less than Rs. 20,000 in value, and the High Court erred in refusing a certificate under Art. 133(1)(b) of the Constitution; and

(2) that the case is otherwise fit for appeal to the Supreme Court.

The material facts bearing on the plea raised are these. The petitioner commenced on July 2, 1951 in the Court of the Subordinate Judge, First Class, Ajmer an action against the respondents claiming a decree for Rs. 10,665 and for rendition of accounts in respect of the balance of sale proceeds of 104 bales of cotton purchased by him through the agency of the respondents. The petitioner claimed that 104 bales of cotton purchased by him were sold by the respondents as his agents on May 14, 1948 for Rs. 27,267/13/6 and without setting the account the respondents delivered towards that amount a demand draft for Rs. 11,000 which was encashed and four cheques of the aggregate value of Rs. 13,000 which because of lack of arrangement with the respondents bankers were not encashed, and the petitioner on that account was entitled to receive from the respondents Rs. 10,665 being the amount due on the foot of dishonored cheques and interest thereon at the rate of 6% per annum between July 2, 1947 to July 1, 1951, less Rs. 4,000 subsequently received by him. The petitioner also claimed a decree for the balance of the price, after giving credit for commission, dalali and godown charges incurred by the respondents as his agents and as he was not in a "position to know" the amounts due to or disbursed by the respondents, he claimed a decree for rendition of account. The subject-matter of the suit was, therefore, a claim for Rs. 10,665 due to the petitioner on a cause of action arising on cheques dishonoured, and a claim for the balance of the price due as may be ascertained on taking accounts.

The trial Court passed a decree directing that account be taken for ascertaining the amount due in respect of the entire transaction of 104 bales and for taking accounts appointed a Commissioner, The High Court of Rajasthan reversed the decree passed by the Trial Court and dismissed the suit, holding that the transactions in respect of which the claim was made by the petitioner were those of an unregistered firm constituted by the petitioner and another person named Duli Chand and the suit

was barred because the firm was not registered. An application filed by the petitioner for certificate under Art. 133 of the Constitution was rejected by the High Court.

The judgment of the High Court proceeded entirely upon appreciation of evidence and on the findings recorded the petitioner's suit must stand dismissed. But counsel for the petitioner urged that the judgment of the High Court directly involves a claim or question respecting property of value not less than Rs. 20,000 and he was entitled as a matter of right to a certificate from the High Court under Art. 133(1)(b) of the Constitution. This argument is sought to be presented in two ways. It is urged in the first instance that the judgment of the High Court involves a question relating to the right of the petitioner respecting 104 bales of cotton belonging to him and sold by respondents for an amount exceeding Rs. 27,000. Secondly, it is urged that pursuant to the order of the Trial Court a Commissioner was appointed and the Commissioner reported that Rs. 12,089/14/6 with interest at the rate 6% per annum from May 14, 1948 were due to the petitioner and as the amount due to the petitioner on that footing was not less than Rs. 20,000 at the date of the High Court, the judgment of the High Court involved a claim respecting property of that amount or value. In our view the contention raised by the petitioner under either head has no substance.

It is conceded, and in our judgment counsel is right in so conceding, that the petitioner could not seek a certificate under cl. (a) of Art. 133(1). The claim in the court of first instance did not reach Rs. 20,000 and one of the conditions for a certificate under that clause being absent, the claim could not be maintained. To attract the application of Art. 133(1)(b) it is essential that there must be - omitting from consideration other conditions not material - a judgment involving directly or indirectly some claim or question respecting property of an amount or value not less than Rs. 20,000. The variation in the language used in cls. (a) and (b) of Art. 133 pointedly highlights the conditions which attract the application of the two clauses. Under cl. (a) what is decisive is the amount or value of the subject-matter in the court of first instance and "still in dispute" in appeal to the Supreme Court : under cl. (b) it is the amount or value of the property respecting which a claim or question is involved in the judgment sought to be appealed from. The expression "property" is not defined in the Code, but having regard to the use of the expression "amount" it would apparently include money. But the property respecting which the claim or question arises must be property in addition to or other than the subject-matter of the dispute. If in a proposed appeal there is no claim or question raised respecting property other than the subject-matter, cl. (a) will apply : if there is involved in the appeal a claim or question respecting property of an amount or value not less than Rs. 20,000 in addition to or other than the subject-matter of the dispute cl. (b) will apply.

In the present case the subject-matter in dispute was a claim for money. A part of that claim was definite and the rest was to be ascertained on taking accounts. The judgment did not involve any claim or question relating to property in addition to or other than the subject-matter in dispute of the value of Rs. 20,000. It was admitted by the petitioner in his plaint that the bales of cotton were sold by the petitioner in his agents. The right of the respondents to sell the bales was not in dispute. What was challenged was the right of the respondents to retain the price received by them. It cannot be said that a judgment dealing with a claim to money alleged to be due from an agent for price of property belonging to the principal sold by the agent either directly or indirectly involves a claim or question respecting property which is sold.

Nor does the alternative ground assist the petitioner. It is true that by his petition the restoration of the decree of the Trial Court, and by adding interest at the rate of 6% per annum to the petitioner's claim as awarded under the report of the Commissioner, the claim of the petitioner on appeal Rs. 20,000. But this is still the subject-matter in dispute : the judgment does not involve any claim or

question respecting property in addition to or other than the subject-matter of the suit.

The petition therefore fails and is dismissed with costs.

Petition dismissed.

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