

SUPREME COURT OF INDIA

Tarapore and Co., Madras

Vs.

V/O. Tractors Export, Moscow

Civil Misc. Petns. Nos. 4011 and 4012 of 1968

(J. C. Shah, V. Ramaswami, G. K. Mitter, K. S. Hegde and A. N. Grover, JJ.)

15.11.1968

JUDGEMENT

SHAH, J.:-

1. M/s. Tarapore and Company - hereinafter called the plaintiffs - applied in Suit No. 118 of 1967 for an interim injunction restraining the Bank of India Ltd. - the first defendant in the suit - from taking any steps in pursuance of a letter of credit opened in favour of M/s. V/O Tractors Export, Moscow, the second defendant. Ramamurthi, J., by order dated April 12, 1968, granted an interim injunction restraining encashment of the letter of credit pending disposal of the suit. In appeals under the Letters Patent preferred by the second defendant, the High Court of Madras set aside that order. Against the orders passed in the two appeals, the plaintiffs applied for certificate under Arts 133 (1)(a) and 133 (1)(b) of the Constitution. The High Court observed that an order granting interim injunction "is a final order, as far as this Court is concerned, determining the rights of parties within this lis or proceeding, which is independent though ancillary to the suit," and they were competent to grant the certificate.

2. By our order dated October 28, 1968, we ordered that the certificate granted by the High Court do stand revoked. We set out the reasons in support of that order. Article 133(1) provides, insofar as it is material:

"(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-

(a) that the amount of value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c).....where the judgment decree or final order appealed from affirms the decision of the Court immediately in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law."

The suit filed by the plaintiffs is a civil proceeding, and the suit involves some claim or question respecting property of not less than twenty thousand rupees. That is a matter not in dispute.

3. The expression "judgment" in Art. 133 (1) in the context in which it occurs means a final adjudication by the Court of rights of the parties, and that an interlocutory judgment even if it decides an issue or issues without finally determining the rights and liabilities of the parties is not a judgment, however, cardinal the issue may be. In the present case not even an issue has been decided, and it is not contended that the order of the High Court amounts to a judgment or a decree. The expression "final order", it has been held by a long course of authorities, occurring in Section 205 of the Government of India Act, 1935, Section 109 of the Code of Civil Procedure and Art. 133 (1) of the Constitution means a final decision on the rights of the parties in dispute in a suit or proceeding; if the rights of the parties in dispute in the suit or proceeding remain to be tried, after the order, the order is not final.

4. In *Ramchand Manjimal v. Goverdhandas Vishindas Ratan Chand*, 47 Ind App 124 = (AIR 1920 PC 86), it was held by the Judicial Committee that an order of the Judicial Commissioner of Sind vacating an order of stay granted under Section 19 of the Indian Arbitration Act, 1899, and refusing to stay a proceeding was not a final order within the meaning of Section 109 (a) of the Code of Civil

Procedure. Viscount Cave referred to *Salaman v. Warner*, (1891) 1 QB 734, *Bozson v. Altrincham Urban District Council*, (1903) 1 KB 547 and *Issacs v. Salbstein*, (1916) 1 KB 139 and observed:

"The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way."

In *Abdul Rahman v. D. K. Cassim and Sons* 60 Ind App 76 = (AIR 1933 PC 58) the Judicial Committee observed that the expression "final order" within the meaning of Section 109 (a) of the Code of Civil Procedure, 1908, is an order which finally disposes of the rights of the parties in relation to the whole suit. In *Abdul Rahman's case* 60 Ind App 76 = (AIR 1933 PC 58) A suit was instituted by D. K. Cassim and Sons claiming damages against the appellant Abdul Rahman. Soon after the suit was instituted the plaintiff firm was adjudicated insolvent and the official assignee was impleaded as an additional plaintiff. The official assignee declined to proceed with the suit, and the suit was dismissed by the Trial Court. In appeal it was held by the High Court of Calcutta that the cause of action was personal to the insolvents and did not vest in the assignee, and accordingly they set aside the decree and remanded the suit for trial. Against that order an appeal was preferred to the Judicial Committee which was held not maintainable.

5. In *S. Kuppusami Rao v. The King*, 1947 FCR 180 = (AIR 1949 FC 1) the Federal Court held that the expression "final order" in Section 205 (1) of the Government of India Act, 1935, means an order which finally determines the points in dispute and brings the case to an end. The test of finality, according to the Court, is whether the order finally disposes of the rights of the parties, and not whether the order decides an important point or even a vital issue in the case.

6. *Mukherjee, J.*, in interpreting the expression "judgment, decree or final order" in Section 205 of the Government of India Act, 1935, in *Mohammad Amin Brothers Ltd. v. Dominion of India*, 1949 FCR 842 = (AIR 1950 FC 77) observed:

"The expression "final order" has been used in contradistinction to what is known as "interlocutory order" x x x If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one, but if the suit is still left alive and has got to be tried in the ordinary way, no finality could attach to the order."

In *Mohammad Amin Brothers' case*, 1949 FCR 842 = (AIR 1950 FC 77) an issue was decided by the Trial Court in a petition for winding up of a Company as to the maintainability of a claim for recovery of income-tax dues. In appeal the High Court overruled the objection raised by the Company about the maintainability of the claim, and finding that a bona fide dispute was pending before the Income-tax authorities relating to a substantial part of the debt on which the application for winding up was made and that the solvency of Company could not be determined before that the

dispute was decided, set aside the order of Trial Judge and remanded the case to him. The Federal Court held that the order appealed against was not a "final order."

7. In *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, 1958 SCR 1007 = (AIR 1958 SC 253) a suit was filed for a declaration that the order of ex-communication passed by the appellant - religious head of a community - was invalid. During the pendency of the suit, the Bombay Prevention of Ex-communication Act 42 of 1949 was enacted and one of the issues raised in the suit was whether the order of ex-communication was invalid. This issue was tried as a preliminary issue and as it raised the question of the vires of the Bombay Prevention of Ex-communication Act, 1949, the State of Bombay was impleaded as a party-defendant in the suit. The trial Court decided the issue against the appellant and the order was confirmed in appeal by the High Court of Bombay. Against the order deciding the issue, an appeal was preferred to this Court with certificate granted by the High Court under Art. 132 and Art. 133 of the Constitution, and it was held that the appeal was not maintainable since the decision on the issue did not finally dispose of the dispute between the parties.

8. In *Srinivas Prasad Singh v. Kesho Prasad Singh*, (1911) 13 Cal I J 681 an order deciding that circumstances had not been established such as would justify an order for stay of execution of a decree under appeal was not a "final order" and was on that account not appealable to the Judicial Committee. Similarly in *Damra Coal Co. v. Benaras Bank*, 21 Cal LJ 281 = (AIR 1915 Cal 624) it was held that an order by the High Court reversing the order of the Court of first instance granting a temporary injunction was not a final order within the meaning of Section 109 of the Code of Civil Procedure.

9. There is, therefore, abundant authority in support of the view that an order is final within the meaning of Art. 133 of the Constitution, under Section 109 Code of Civil Procedure or Section 205 of the Government of India Act, 1935, if it amounts to final decision on the rights of the parties in dispute in the suit or proceeding; if after the order is made the suit or proceeding still remains to be tried, the rights in disputes have to be determined, the order is interlocutory.

10. Counsel for the appellant strongly relied upon a recent judgment of this Court in *Mohan Lal Maganlal v. State of Gujarat*, AIR 1968 SC 733 and contended that the view expressed in the earlier cases is superseded. In *Mohanlal Thakker's case*, AIR 1968 SC 733 after an enquiry under Section 476, Code of Criminal Procedure, 1898, a Magistrate ordered that a complaint be filed against a person in respect of offences under Section 205, 467 and 468 read with Section 114 I. P. Code. In appeal the Additional Sessions Judge held that the complaint was competent only in respect of the offence under Section 205 read with Section 114. The High Court dismissed a revision application against the order of the Court of Session. Certificate was thereafter issued by the High Court under Art. 134 (1) (c) of the Constitution for leave to appeal against the order. The competence of the High Court to grant the certificate was challenged at the hearing of the appeal. This Court held (*Bachawat and Mitter JJ.*, dissenting) that the order passed was a final order within the meaning of

Art. 134 (1)(c) since the controversy between the parties whether the complaint in respect of offenses under Sections 467 and 468 read with Sections 114, I. P. Code was disposed of by the order of dismissal and the proceeding regarding that question was finally decided. It was observed that the finality of that order was not be judged by co-relating it with the controversy in the complaint, viz., whether the appellant had committed the offence charged against him therein. There is nothing in that judgment which supports the contention that this Court has departed from the principle of the earlier decisions or has suggested a different test for determining the finality of orders. The Court in that case was concerned merely with an order passed by the High Court which maintained the order of the Additional Sessions Judge that a complaint under Section 205 read with Section 114, I. P. Code could be filed against the appellant. The order of the High Court finally disposed of the proceeding in the Magistrate's court relating to the expediency of instituting criminal proceedings against the appellant. It was thereafter for the Court trying the complaint to decide whether the offence complained of was committed by the appellant. The proceeding for filing a complaint under Section 476 of the Code of Criminal Procedure was a self-contained proceeding and was finally disposed of by the order directing the filing of a complaint under Section 205 read with Sec. 114, I. P. Code. The proceeding instituted on the complaint was not part of or incidental to the proceeding for an enquiry whether a complaint should be filed. The Court in that case expressly approved of the earlier view at p. 736, where after referring to Kuppusami Rao's case, 1947 FCR 180 = (AIR 1949 FC 1) and Sardar Syedna Taher Saifuddin Saheb's case, 1958 SCR 1007 = (AIR 1958 SC 253) observed:

".....these were cases where the impugned orders were passed in appeals or revisions and since an appeal or a revision is continuation of the original suit or proceeding the test applied was whether the order disposed of the original suit or proceeding. If it did not, and the suit or proceeding was a live one, yet to be tried, the order was held not to be final. Different tests have been applied, however, to orders made in proceeding independent of the original or the main proceeding."

11. In our judgment an order passed by the High Court in appeal which does not finally dispose of a suit or proceeding and leaves the rights and obligations of the parties for determination in the suit or proceeding from which appeal has arisen, is not final within the meaning of Art. 133(1) (a) and (b). The order refusing to grant an interim injunction did not determine the rights and obligations of the parties in relation to the matter in dispute in the suit. We are unable to hold that because the plaintiff's suit as a result of the order of the High Court may become infructuous as framed, and the plaintiffs may have to seek amendment of the plaint to get effective relief, an order, which is essentially an interlocutory order may be deemed final for the purpose of Art. 133(1) of the Constitution. In our judgment, Mohanlal Maganlal Thakkar's case, AIR1968 SC 733 makes no departure from the earlier judgments of the Judicial Committee, the Federal Court and this Court. The plaintiffs will pay the costs of the petitioners of the application for revocation of the certificate.

Application allowed.