

Bombay Gas Co. Ltd.

Vs

Jagan Nath Pandurang and Others

Civil Appeals Nos. 158 of 1968 and 1300 of 1972

(C. A. Vaidialingam, I. D. Dua JJ)

22.03.1972

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, on certificate, by the Bombay Gas Co. Ltd. is directed against the judgment and order, dated February 6, 1967, of the Bombay High Court in Special Civil Application No. 1987 of 1965. The High Court set aside the decision of the Court of Small Causes, Bombay, in Payment of Wages Appeals Nos. 162 and 163 of 1962 and remanded the proceedings to the Additional Authority for calculating and awarding over-time wages that may be due to the respondents Nos. 1 to 80 herein. The High Court further reversed the decision of the Court of Small Causes, Bombay, in Payment of Wages Appeal No. 61 of 1963 and restored the orders passed by the Third Addition Authority in favour of the respondents Nos. 81 to 118 herein, regarding their right to get wages for weekly off days. C.M.P. No. 1300 of 1972 is an application filed by the respondents in the civil appeal for revoking the certificate for leave to appeal to this Court granted by the High Court to the appellant herein.

2. We will briefly state the circumstances under which the appeal has come to this Court on certificate : The respondents Nos. 1 to 14 who were employed under the appellant as Syphon Pumpers filed on March 3, 1958 before the Additional Authority 14 applications under Section 15 of the Payment of Wages Act (hereinafter to be referred as the Act) claiming over-time wages for the period February, 1957 to January, 1958. On the same date the respondents Nos. 15 to 80, who were employed under the appellant as Mains workers filed before the same Authority 66 applications claiming over-time wages for the same period. The claim was substantially based under the provisions of the Bombay Shops and Establishments Act, 1948 (hereinafter to be referred as the Establishment Act). The appellant raised two grounds of defence : (a) The claims were barred by the Award, Part II of the Industrial Tribunal, Bombay, dated March 30, 1950 in Reference (IT) No. 54 of 1949; and (b) The applicants were not workmen covered by the Establishments Act. On October 13, 1962, the Additional Authority held that the Award, referred to, by the Company was no bar to the said employees claiming over-time wages. But the said Authority accepted the contention of the Company that the applicants are not covered by the Establishments Act, which gives them the benefit of weekly off days with wages under Section 18(3). In this view the applications filed by the respondents Nos. 1 to 80 herein were dismissed. The said applicants filed before the Court of Small Causes, Bombay, which was the Appellate Authority, Payment of Wages Appeals Nos. 162 and 163 of 1962 challenging the decision, dated October 13, 1962 of the Additional Authority, dismissing their applications.

3. During the years 1962-63, the respondents Nos. 81 to 118 herein, in the Civil Appeal filed 38

applications before the Third Additional Authority under Section 15 of the Act claiming wages for weekly off days. The said respondents were working in Mains, Heating Appliances and Fitting Departments of the appellant. Here again, the basis of the claim was under the provisions of the Establishments Act. The appellant raised the same two defences as in respect of the claim for over-time wages. The Third Additional Authority, by its judgment, dated April 26, 1963, held that the Award, Part II of the Industrial Tribunal, Bombay, dated March 30, 1950 in Reference (IT) No. 54 of 1949 is no bar to entertain the applications of the said employees. The said authority further held that the district office in which the said applicants were employed is a "Commercial Establishment" under the Establishments Act and as such they were entitled to wages for weekly off days under Section 18(3) of the said Act. Accordingly, the said authority directed the appellant to pay the amounts mentioned in the judgment to respondents Nos. 81 to 118 and also to pay certain amount by way of compensation. The appellant filed Payment of Wages Appeal No. 61 of 1963 before the Court of Small Causes, Bombay, which was the Appellate Authority, challenging the decision of the Third Additional Authority, dated April 26, 1963 regarding payment of wages for weekly off days.

4. All the three appeals, namely, Payment of Wages Appeals Nos. 162 and 163 of 1962 relating to over-time wages, filed by the respondents Nos. 1 to 80, and Payment of Wages Appeal No. 61 of 1963 filed by the Company relating to wages for weekly off days decreed to respondents Nos. 81 to 118 were heard together and disposed of by a common judgment, dated February 11, 1965 by the Appellate Authority, the Court of Small Causes, Bombay. It was held that the claims of all the workmen for over-time wages and wages for weekly off days were barred by the Award, Part II, dated March 30, 1950 of the Industrial Tribunal, Bombay, in Reference (IT) No. 54 of 1949 and that the said award was still in force and binding on the parties. Accordingly, the Payment of Wages Appeals Nos. 162 and 163 of 1962 were dismissed and Payment of Wages Appeal No. 61 of 1963 was allowed. The result was that the applications filed by the employees before the Additional Authority and the Third Additional Authority stood dismissed.

5. It must, however, be stated that though the Appellate Authority, the Court of Small Causes, Bombay held that the claims of all the workmen, both for over-time wages and weekly off days wages were barred by the Award, nevertheless it also considered the question whether the workmen are employed in a "Commercial Establishment" so as to claim relief under the Establishments Act. The Appellate Authority held that the district office of the Company though situated within the compound of the factory is a "Commercial Establishment" under the Establishments Act. Accordingly, the Court of Small Causes agreed with the finding of the Third Additional Authority that the workmen were governed by the provisions of the Establishments Act and as such are entitled to the benefit conferred on them by that Act. However in view of the fact that the claims of all the workmen were held to be barred in view of the award in Reference (IT) No. 54 of 1949, the workmen's appeals were dismissed and the appeal filed by the Company was allowed. As stated earlier, the decision of the Court of Small Causes resulted in the dismissal of all the applications filed by the workmen before both the Additional Authority and the Third Additional Authority.

6. All the 118 workmen filed before the Bombay High Court, Special Civil Application No. 1987 of 1965 under Articles 226 and 227 of the Constitution for quashing the judgment of the Court of Small Causes, Bombay, dated February 11, 1965. By its judgment and order, dated February 6, 1967, the High Court held that neither the claim of the respondents Nos. 1 to 80 for over-time wages, not the claim of the respondents Nos. 81 to 118 for wages for weekly off days was barred by the award, Part II, dated March 30, 1950 in Reference (IT) No. 54 of 1949. So far as the respondents Nos. 1 to 80 were concerned, the High Court has set aside the judgment of the Court of Small Causes, Bombay, as well as the order, dated October 13, 1962 of the Additional Authority and

remanded their applications to the latter for ascertaining and decreeing the amount of over-time wages that may be due to them. Regarding the respondents Nos. 81 to 118, the High Court has set aside the judgment of the Court of Small Causes, Bombay, and restored the order, dated April 26, 1963 of the Third Additional Authority recognising their claim for wages for weekly off days.

7. It is seen from the judgment of the High Court that the Company did not challenge the finding of the Court of Small Causes that the workmen are employed in a "Commercial Establishment" and as such are entitled to the benefits of the provisions of the Establishments Act. The High Court has also stated that the reason given by the counsel appearing for the Company for not challenging that finding was that it was not open to the Company, which was a respondent in the writ petition to challenge the said finding in those proceedings. Therefore, the High Court has adjudicated upon the only question whether the Award bars the claims of the workmen as held by the Court of Small Causes. On this point, as pointed out earlier, the High Court disagreed with the decision of the Court of Small Causes.

8. The appellant filed on April 6, 1967 in the High Court Application No. 869 of 1967 praying for the grant of a certificate of fitness to enable it to appeal to this Court. In the application of the appellant, after setting out the nature of the applications filed before the Additional and Third Additional Authorities, the amounts claimed by the workmen, the decision of the said two Authorities, as well as the judgment and order of the Court of Small Causes, and the High Court, it was stated that the amount of value of the subject-matter before all the Authorities, in the appeals, as well as in the High Court and still in dispute in the proposed appeal to this Court, was Rs. 20,000/- and upwards. It was further stated that in any event the case is a fit one for appeal to this Court. Accordingly, the appellant prayed for the grant of a certificate that the amount or value of the subject-matter in the said Special Civil Application, applications before the Additional and Third Additional Authorities, in the appeals before the Court of Small Causes and in dispute in the proposed appeal to this Court was Rs. 20,000/- and upwards or in the alternative on the ground that the case is a fit one for appeal to this Court.

9. It will be seen, that though the appellant did not specify under which clause of Article 133(1) the certificate was asked for, nevertheless a perusal of the averments made in the petition and the prayers made therein show that the appellant was asking for a certificate under clause (a) or (c) of Article 133(1). The High Court after hearing all parties, by its order, dated October 19, 1967 directed a certificate to issue under Article 133(1)(b) of the Constitution. On the basis of the said certificate, the petition of appeal has been lodged by the appellant in this Court, on December 16, 1967.

10. The respondent has filed C.M.P. No. 1300 of 1972 requesting this Court to revoke the certificate granted to the appellant by the High Court on October 19, 1967. If the certificate revoked, that will result in our holding that the appeal is not competent. Hence will deal with the application for revocation of the certificate.

11. In the affidavit filed in support of the application for revocation, the following averments are made : The appeal refers to two sets of claims which are separate and independent of each other-one for over-time wages and the other for wages for weekly off days. The application in respect of these two different claims were filed by the concerned workmen before two different Authorities under the Act and were also disposed of separately by those Authorities. Separate appeals were preferred before the Court of Small Causes. Though a common judgment was delivered by the Court of Small Causes, the two sets of claims have been dealt with independently and separately in the judgment, as

there were separate and different appeals. The claim for weekly off days wages comes only to Rs. 6,675/- and that was the value of the subject-matter before the Third Additional Authority and in the appeal before the Court of Small Causes as well as in the writ petition before the High Court. The same is the value of the subject-matter of the appeal to this Court. The value of the subject-matter of the claim in respect of over-time wages only Rs. 10,660/- before the Additional Authority and in the appeals before the Court of Small Causes, in the High Court, as well as in the appeal before this Court. The value of the subject-matter of neither of the two separate and distinct claims is Rs. 20,000/- and even if both the claims are added, the value of the subject-matter is less than Rs. 20,000/-. It was, in view of this circumstance, that the High Court did not grant a certificate under Article 133(1)(a). The High Court did not consider the case as a fit one for appeal to this Court, and hence no certificate was granted under Article 133(1)(c). What has weighed with the High Court in granting a certificate under Article 133(1)(b) is the circumstance that the nature of the demands made by the workmen were such that they are recurring claims arising in the future also and as such the final judgment and order in the writ petition involve directly or indirectly a claim respecting property of the value of not less than Rs. 20,000/-. This view of the High Court is erroneous and contrary to the decisions of this Court and as such the grant of certificate by the High Court is erroneous.

12. Along with the application, the respondents have filed a statement to show that the value of the subject-matter of the claim regarding overtime wages does not exceed Rs. 10,660/-. At this stage it may be mentioned that according to the appellant this schedule deals only with the claims made by the Mains workers and it does not include the amount claimed by the 14 Syphon Pumpers.

13. On behalf of the appellant, an affidavit has been filed opposing the application for revocation of the certificate. In this affidavit the averments made are as follows : Though the appeal has been pending in this Court for a considerable time, the respondents have filed the application for revocation of the certificate only when the appeal was about to be heard. It is pointed out that the respondents opposed before the High Court the application of certificate on the ground that the aggregate of all claims put together amounts only to Rs. 17,678.80 P. and hence no certificate should be granted. The appellant had filed rejoinder giving details regarding the value of the subject-matter of the appeal to this Court. As per the particulars given therein, the value of the subject-matter of the entire claims in respect of over-time wages, weekly off days wages and compensation is of the value of Rs. 26,822.09. Therefore, the amount or value of the subject-matter in dispute in the court of the first instance and still in dispute in the appeal is Rs. 26,822.09 which is well over the prescribed limit of Rs. 20,000/-. The claim for weekly off days wages at the rate claimed by the workmen on the date of the judgment of the High Court, that is, February 6, 1967, became crystallised in the aggregate amount of over Rs. 30,000/-. Similarly, the claim for over-time wages as a result and effect of the judgment of the High Court, as on the date of the decision in the writ petition, also exceeds the sum of Rs. 20,000/-. The respondents raised a controversy regarding the amount or value of the subject-matter in dispute before the High Court in application No. 869 of 1967. But, in as much as the recurring claims of both weekly off days wages and overtime wages, at the time of the High Court's judgment in the writ petition on February 6, 1967, had crystallised into amounts exceeding Rs. 20,000/-, the High Court issued the certificate under Article 133(1)(b) and that the certificate so issued under the said Article is perfectly valid.

14. We have set out fairly elaborately the claim made by the respondents in C.M.P. No. 1300 of 1972 for revoking the certificate granted by the High Court as well as the defence pleaded by the appellant to that application. In its application before the High Court, the appellant did not specify under what clause of Article 133(1) the certificate was prayed for. But from the material averments

made by the appellant in its application before the High Court for grant of certificate, it is to be gathered that the prayer was substantially on the ground that the amount or value of the subject-matter of the applications before the Payment of Wages Authorities, in the appeals before the Court of Small Causes, in the writ petition before the High Court and still in dispute in the proposed appeal to this Court was Rs. 20,000/- and upwards. This prayer will bring the application under Article 133(1)(a). In the alternative, the certificate was prayed for on the ground that the case is a fit one for appeal to this Court. This prayer will come under Article 133(1)(c). The request of the appellant for grant of certificate on the above basis was opposed by the respondents herein on the ground that the amount or value of the subject-matter before all the Authorities, the Court of Small Causes, the High Court and in dispute in the proposed before this Court was far below Rs. 20,000/- and as such the matter does not come under Article 133(1)(a). It was also averred that there was no substantial question of law of any great importance (sic) arose for consideration as to attract Article 133(1)(c) (sic). After giving details regarding the nature of the claims made by the workmen, both as overtime wages and weekly off days wages, it was stated that the claim fell far short of the sum or Rs. 20,000/-. As the High Court had only adjudicated upon that claim in the writ petition, the respondents pleaded that the judgment of the High Court does not involve directly or indirectly any claim or question respecting property of the value of Rs. 20,000/- or more.

The High Court, on October 19, 1967 granted the certificate in the following terms :

"Certificate to issue under Article 133(1)(b) of the Constitution. Costs in the Supreme Court appeal."

15. From the above it will be seen that the High Court has not given any indication as to how it issued the certificate under Article 133(1)(b). But one thing is clear that it did not grant the certificate on the basis of the claim made by the appellant either under clause (a) or clause (c) of Article 133(1). On the basis of the claims made by the workmen as over-time wages and weekly off days wages for the particular periods, the appellant has calculated at the same rate for even subsequent period till the date of the judgment of the High Court and claimed that the amount or value in dispute in appeal to this Court is over Rs. 26,822.09 P. The appellant had also raised a point in its further affidavit before the High Court that it will have to meet in future also claims from its workmen and as such it will have to face a recurring liability. On this basis the appellant has raised a plea that the judgment of the High Court involves directly or indirectly a claim or question respecting property of the value of Rs. 20,000/- and more. In view of the fact that the High Court has granted the certificate under Article 133(1)(b), it has to be presumed that it has accepted the appellant's plea that a certificate could be granted under the said clause when there is a recurring liability, which, if calculated for subsequent years will be at least Rs. 20,000/- and more. The question is whether under such circumstance the certificate granted under Article 133(1)(b) by the High Court, is proper and valid.

16. It is significant to note that in Paragraph 7 of the petition of appeal filed in this Court, the appellant has stated that it is not possible to estimate at a money value the subject-matter of dispute in the appeal. Accordingly, it has paid only a fixed court-fee of Rs. 250/- as per the rules. In the claim statement filed by the appellant before the High Court, it has stated that Rs. 6,675.84 is claimed as weekly off wages by the respondent Nos. 80 to 118 and a sum of Rs. 18,221.25 is claimed by the respondents Nos. 1 to 80 as over-time wages. These two different claims were not consolidated before the Authorities because the claim for weekly off wages was dealt with by the Third Additional Authority and the claim for overtime wages was dealt with by the Additional Authority.

17. According to the Union the claim for over-time wages does not exceed Rs. 10,660/-. But it is not necessary for us to go further into this aspect as Article 133(1)(a) is out of the picture.

18. The appellant, relying on the calculation filed by it before the High Court, has further stated in its affidavit, dated February 18, 1972, filed in opposition to the application for revocation, that on the basis of the claim for weekly off wages in the sum of Rs. 6,675.84 P. for one year, if calculated for the subsequent years up to February 6, 1967, the date of the judgment of the High Court, the amount will aggregate nearly Rs. 30,000/-. Similarly, in respect of over-time wages, on the basis of the claim made by the workmen, if calculated, up to February 6, 1967, the amount will exceed the sum of Rs. 20,000/-. It will be seen that if the claims made before each of the Authorities for the particular periods alone are taken into account, the total claims will be less than Rs. 20,000/-. It is really that claim which was the subject of consideration by the High Court in the writ petition. Is it open to the appellant to add to the original claim made by the workmen, the further amount calculated by it till the date of the judgment of the High Court and establish that as the total amount so arrived at is not less than Rs. 20,000/-, Article 133(1)(b) can be invoked on the ground that the judgment of the High Court directly or indirectly involves a claim in respect of property of the value of not less than Rs. 20,000/- ?

19. Even on the basis of the valuation worked out by the appellant, it is seen that the claim for over-time wages which was filed before the Additional Authority was valued only at Rs. 18,221.25 P. as per the amended claim at 1 1/2 times of wages, though according to the respondents the amount of claim does not exceed Rs. 10,660/-. Similarly, the claim for weekly off wages filed by another set of workmen before the Third Additional Authority, even as per the appellant's calculation was only Rs. 6,675.84 P. The claim for over-time wages and weekly off wages, each of them taken separately does not exceed Rs. 20,000/-. Though the appeals against the decision of the two Authorities were filed before the Court of Small Causes, it is to be noted that separate appeals were filed by different workmen and the appellant in respect of these two different categories of claims. Though the Court of Small disposed of all the appeals by a common judgment, nevertheless the claim in respect of over-time wages dealt with apart and different from the claim for weekly off wages. Even before the High Court, though one writ petition was filed by all the workmen, the claims under two different heads for over-time wages and weekly off wages were dealt with separately by the High Court. It is not as if that the reasons given by the High Court for upholding the claims for over-time wages automatically resulted in the allowing of the claim for weekly off wages also. In fact entirely different considerations apply for the two different sets of claims and that has been kept in view by the High Court. Though ultimately, the High Court has delivered only a common judgment, nevertheless the decision related to two different sets of claims each having nothing in common with the other. Therefore, it was not open to the appellant to ask this Court to proceed on the basis that there was only one single and common claim dealt with by the High Court in its judgment. Therefore, there was no question of any consolidation of all the claims before the High Court. In this view it will be seen that even according to the calculations made by the appellant, the value of the subject-matter of the claim with respect to over-time wages can only be the same as was before the Additional Authority, namely, Rs. 18,221.25 P. Which is less than Rs. 20,000/-. Similarly, the amount or value of the claim which was adjudicated upon by the High Court in respect of weekly off wages was also of the same value as Rs. 6,675.84 P. as was the case before the Third Additional Authority, which claim is also less than Rs. 20,000/-. Therefore, considering the matter from this point of view, it is clear that the value of the subject-matter of the claim before the High Court in respect of each of these matters was less than Rs. 20,000/-.

20. The appellant, as mentioned earlier, has calculated at the same rate as claimed for over-time

wages and weekly off wages for subsequent years up to the date of the judgment of the High Court and has stated that so calculated the amount or value of the subject-matter of the claim relating to weekly off wages exceeds Rs. 30,000/-. Similarly, the amount or value of the subject-matter of the claim of over-time wages exceeds Rs. 20,000/- and hence it is stated that the judgment of the High Court involves directly or indirectly a claim or question respecting property of the value of Rs. 20,000/- and more.

21. Mr. M. C. Bhandare, learned counsel for the respondents, in support of the application filed for revocation of the certificate has urged that before the High Court there was no claim or question arising for consideration excepting the subject-matter of over-time wages and weekly off wages claim for a particular period by the workmen. No claim for any further period has been made by them; nor did it arise for consideration before either the Authorities, the Court of Small Causes or the High Court. Nor does such a claim arise for consideration in the appeal to this Court. Therefore, he pointed out that the judgment of the High Court does not either directly or indirectly involve any claim apart from what was the subject-matter of dispute between the parties. The High Court not having granted the certificate under Article 133(1)(a), it follows that the amount or value of the subject-matter of the dispute before it or on appeal to this Court was not Rs. 20,000/- or above. Clause (c) of Article 133(1) also stands excluded as the High Court has not granted the certificate on the ground that the case is a fit one for appeal to this Court, and as Mr. Sorabji, learned counsel for the appellant, has represented that he is not relying on that clause. In order to attract Article 133(1)(b), under which the certificate has been granted, the essential requirement is that there must be involved in the appeal to this Court a claim or question respecting property of the value of not less than Rs. 20,000/- in addition to or other than the subject-matter of the dispute. In this case this condition is not satisfied.

22. In support of the above proposition, Mr. Bhandare, referred us to the decision of this Court in *Chhitarmal v. M/s. Shah Pannalal Chandulal* ((1965) 2 SCR 751 : AIR 1965 SC 1440 : (1966) 1 SCJ 88.). It is laid down in that decision as follows :

"The variation in the language used in clauses (a) and (b) of Article 133 pointedly highlights the conditions which attract the application of the two clauses. Under clause (a) what is decisive is the amount or value of the subject-matter in the court of the first instance and "still in dispute" in appeal to the Supreme Court : under clause (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 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, clause (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 clause (b) will apply."

23. From the facts stated in the above decision it is seen that the appellant therein pleaded on an alternative basis that the claim in the appeal exceeded Rs. 20,000/- that alternative claim was on the basis of adding interest at 6 per cent. per annum to his original claim as awarded by the Trial Court whose decree he wanted to be restored in the appeal. That again was rejected on the ground that the original claim of the appellant therein, which formed the subject-matter of dispute of dispute before the Trial Court, was itself, the subject of dispute in the appeal and therefore by adding interest to the

original claim, it was not open to the appellant to plead that the valuation in the appeal exceeds Rs. 20,000/-.

24. From the decision, cited above, the following principle emerge :

- (1) In order to attract Article 133(1)(b) the property respecting which the claim or question arises, must be property in addition to or other than the subject-matter of the dispute.
- (2) If in the appeal to this Court there is no question or claim raised respecting the property other than the subject-matter, then clause (a) of Article 133(1) will apply.
- (3) Adding future interest or possible further claims to the original value of the subject-matter till the date of the judgment of the High Court and which items are not the subject of consideration by the High Court will not enable a party to plead that the claim so calculated exceeds Rs. 20,000/-. This is not permissible as the addition of interest or calculation of further possible claims are all related only to the original subject-matter, which is still in dispute.

25. In *A. V. Subramania Ayyar v. Sellammal* (ILR 39 Mad 843 : 30 MLJ 317 : 31 IC 296.), under Section 110 of the Code of Civil Procedure it was pleaded that though the subject-matter of the dispute in the court of first instance was less than Rs. 10,000/-, the final decree of the High Court involved a claim to property of over Rs. 10,000/- in value. This value at the relevant time was for purposes of appeal to the Judicial Committee of the Privy Council. The appellant added the mesne profits, which according to him must be considered to have accrued subsequent to the date of the original claim made in the suit. So adding, the appellant therein padded that the decision of the High Court must be considered as involving a claim to property of over Rs. 10,000/- in value. Though if the amount of mesne profits was added the value was over Rs. 10,000/-, the High Court rejected the plea on the ground that the claim for mesne profits has not been awarded by the decree, nor was it has subject-matter of dispute in the appeal. It was further held that the decision of the High Court has not affected the rights of the appellant therein in any property other than the one that was the subject-matter in dispute. In this view, it was held that the judgment of the High Court did not directly or indirectly involve any question to any property other than the subject-matter of dispute. On this ground, certificate was refused.

26. Mr. Sorabji, learned counsel for the appellant, accepted the principle that to attract Article 133(1)(b) the property, referred to therein, must be property in addition to or other than the subject-matter of the dispute. In fact, he cannot but accept this principle as it has been so laid down by this Court in *Chhitarmal v. M/s. Shah Pannalal Chandulal* (supra), The counsel did not rely on Article 133(1)(a) or (c) for the purpose of this appeal. He pointed out that as laid down by this Court in the decision, referred to above, the expression "property" in Article 133(1)(b) would also take in claim regarding money. He pointed out that the appellant in this case is prejudiced by the judgment of the High Court as it will have to face recurring liability in future at the hands of its workmen, on the basis of the claims made by them as over-time wages and weekly off wages. It is that liability which the appellant will have to face and which has been imposed upon it to its prejudice by the judgment of the High Court, that is sought to be got rid of in the appeal to this Court. As the recurring liability or claim will be more than Rs. 20,000/- the matter squarely falls under Article 133(1)(b) and the certificate granted by the High Court is correct. He further pointed out that it is not necessary that the judgment of the High Court should directly involve other properties, including money. Clause

(b) of Article 133(1) will be attract even if the judgment indirectly involves a claim in respect of property or money of not less than Rs. 20,000/-. He referred us to the decision in *Meghji Lakhamshi an Brothers v. Furniture Workshop* (1954 AC 80.), when the Judicial Committee had to construe Article 3(a) of the Eastern African (Appeal to Privy Council) Order in Council, 1951. The latter part of this Article was as follow :

"..... or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards."

27. The Judicial Committee held that the value referred to in the said Article must be looked at from the point of view of the appellant. It is not doubt true that the value has to be considered from the point of view of the appellant. The property may also include money. But it is essential under Article 133(1)(b) that the claim must be in respect of property or money which property or money must be different from the subject-matter of the litigation. Therefore, the decision of the Judicial Committee is not of much assistance to the appellant.

28. Mr. Sorabji, then referred us to the decision of the Full Bench of Andhra Pradesh High Court in *Smt. Rajah Kishore Devigar v. Bhaskara Gouta Chorani and Others* (AIR 1960 AP 286 : 1960 Andh LT 43 : (1960) 1 Andh WR 82.). Dealing with clauses (a) and (b) of Article 133(1) the High Court says :

"In our opinion, clause (b) of Article 133(1) is intended to meet a situation essentially different from that arising under clause (a). Under clause (a) we have to look at the value of the reliefs obtainable in the suit and in the appeal. Under clause (b) we have to look at the effect of the judgment appealed against from the point of view of the appellant. A thing is said to be involved in another when it is a necessary resultant of that other. (Stroud's Judicial dictionary). The matters adjudicated upon in the judgment appealed from may have far reaching consequence detrimental to the property of the appellant, although they were not comprised in the cause of action of the plaintiff and cannot be regarded as being 'still in dispute' on appeal."

29. From the facts in that case it is clear that the High Court was dealing with the questions whether the decision of the High Court will have far reaching effect on the other properties of the appellant therein, though those properties were not the subject-matter of dispute in the appeal. This decision in fact emphasises quite rightly that to attract clause (b) of Article 133(1) one has to look to the effect of the judgment sought to be appealed against on other properties which are not the subject-matter of dispute and are not comprised as such in the litigation.

30. Similarly, the decision of the Madras High Court in *Commissioner of Income-tax, Madras v. S. L. Mathias* (AIR 1938 Mad 352 : (1938) 1 MLJ 384 : 174 IC 459.), is also of no assistance to the appellant. The facts of the said decision show that the High Court was of the view that there is a difference of opinion between the High Courts on the effect of the Proviso 2 to Section 4(2) of the Income-tax Act, 1922. The High Court was of the view that "there can be no doubt that the question involved is a substantial question of law", and on this basis granted a certificate of fitness. It is clear that the High Court granted the certificate on the ground that there was a substantial question of law involved in the appeal and as such it was a fit one for appeal to the Judicial Committee.

31. Mr. Sorabji then referred us to the decision of the Madras High Court in *G. Appuswamy*

Chettiar an Another v. R. Sarangapani Chettiar and Others ((1965) 1 ILR Mad 361.). In that case the suit was for a declaratory relief regarding the invalidity of the adoption of a particular person. The certificate was asked for on the ground that the decision of the High Court involves directly or indirectly a claim or question respecting property of the value of Rs. 20,000/- and more. It was accepted by the High Court that if leave to appeal was not granted to the petitioners therein, they will lose an estate worth more than Rs. 68,000/- though the estate itself was not directly the subject-matter of dispute either in the Trial Court or the High Court. The High Court further held that in a suit for a declaration of adoption a claim made by the reversioners to the property cannot be considered to be too remote. It is on this ground that the certificate was granted. It is clear from the judgment of the High Court that the final decision of the High Court in that case did affect the rights of the petitioners therein to properties of the value of more than Rs. 68,000/-. It is on that basis that the certificate was granted under Article 133(1)(b).

32. In our opinion, the decisions relied on by Mr. Sorabji do not support his contention that the certificate granted by the High Court, in the case before us, under Article 133(1)(b) is proper and valid. In fact the said decisions clearly bring out the distinction between clauses (a) and (b) of Article 133(1) and they lay down that only when the judgment or final order affects property which is not the subject-matter of the litigation that Article 133(1)(b) will apply. Those decisions are in conformity with the principles laid down by this Court in *Chhitarmal v. Messrs. Shah Pannal Chandulal* (supra).

33. It is clear that interest, unless granted by the decree of the Trial Court, cannot be notionally added to inflate the value of the claim in the appeal so as to make it appear that on the date of the judgment of the High Court the value is not less than Rs. 20,000/-. On the same principle, we have already pointed out that mesne profits, which have not been decreed by the Trial Court, cannot be added to the original claim made in the suit, so as to enable a party to plead that the value in the proposed appeal on the date of the judgment of the High Court is more than Rs. 20,000/-.

34. We may refer to the decision of the Judicial Committee in *Moti Chand and Others v. Ganga Parshad Singh and Another* (29 IA 40 : ILR 24 All 174 : 6 CWN 362.), where interest awarded under the decree of the Trial Court was taken into account for the purpose of considering the value in the appeal before the High Court. The suit was for recovery of a certain amount together with interest. The Trial Court passed a decree for Rs. 9,496/- and awarded interest to the plaintiff at Rs. 570/- per year on the decree amount until realisation. By the time the High Court's decree was made, the amount at issue had reached to Rs. 10,636/- with further contingent increment. Under Section 596 of the old Civil Procedure Code, certificate was asked for from the High Court for leave to appeal to the Judicial Committee. The High Court declined to grant the certificate on the ground that the amount or value of the subject-matter of the suit in the court of first instance was not Rs. 10,000/- as required by the said section, though the amount or value of the matter in dispute on appeal to Her Majesty in Council was about Rs. 10,000/-. No doubt, this decision is not on the question regarding matters covered by clause (b) of Article 133(1). But we are only referring to this decision to show that interest can be taken into account for the purpose of considering the value in an appeal provided the decree itself has awarded interest.

35. We may also refer to the decision of the Judicial Committee in *Surapati Roy and Others v. Ram Narayan Mukherji and Others* (50 IA 155 : AIR 1923 PC 88 : 73 IC 193.). In that decision the question arose under Section 110 of the Code of Civil Procedure, 1908 regarding the validity of the certificate granted by the High Court. Though the rent claimed in the suits was less than Rs. 10,000/- the High Court had granted a certificate of fitness on the ground that the value of the

subject-matter was over Rs. 10,000/-. The objection taken before the Judicial Committee regarding the validity of the certificate on the ground that the subject-matter was below the appealable value was rejected as follows :

"..... The subject matter in dispute relates to a recurring liability and is in respect of a property considerable above the appealable value. The certificate in the circumstances is quite in order."

36. It is to be noted that the liability which was being denied as due to the landlord by way of rent from the lands in question was in respect of the properties in question and it was on that basis that the certificate was held to be valid.

37. Both the above decisions of the Judicial Committee have no application to the facts of the present case on hand. The principle that a claim made by one party and resisted by another is ordinarily the subject-matter of the dispute in the Trial Court and continues to be the subject-matter in the Appellant Courts. In the case before us the claims for over-time wages and weekly off wages before the authorities were for a specified period. The claims for the identical periods were the subject-matter in the appeals before the Court of Small Causes. The High Court had also to consider the correctness of the decision of the Court of Small Causes regarding the claims made by the workmen for the particular periods. The appellant was not entitled to notionally add on to the amount originally claimed by the workmen for particular periods, and further amounts on the grounds that they must be considered to have accrued due to the workmen till the date of the judgment of the High Court. If the subsequent additions made to the original claim are accepted as correct, then the position would be that if it is an ordinary civil litigation, the subject-matter of the suit and its value would vary with the length of time during which the suit may be pending in the Courts. Such a position is not warranted by the provisions of Article 133(1) as laid down by this Court in *Chhitarmal v. Messrs. Shah Pannalal Chandulal* (supra). If in the proposed appeal to this Court there is no claim or question raised respecting property other than the subject-matter of dispute, clause (a) of Article 133(1) will apply. That clause has not been invoked in this case by the High Court.

38. It is not possible to accept the contention of Mr. Sorabji that as the appellant will have to face from its workman in future claims similar to the one recognised by the High Court, there is involved a claim or question in respect of property of the value of not less than Rs. 20,000/- in addition to or other than the subject-matter of appeal. In the first place, this contention proceeds on the assumption that the judgment of the High Court directs the appellant to pay in future amounts not less than Rs. 20,000/-. This assumption is basically erroneous, as there is no such direction given by the High Court. The payment of wages as for over-time or weekly off days will depend upon several circumstances. If over-time work is not taken, then no payment need be made. If over-time work is taken for a lesser time, then the amount to be paid will also be less.

39. In our opinion, this is not a case where the decision of the High Court, apart from dealing with the subject-matter in dispute before it, has the effect of affecting the rights of the appellant regarding other properties, including money. We may give an instance where a final judgment may have an impact or affect properties, other than the subject-matter in dispute. In a suit for mandatory injunction directing a defendant to vacate a land, the subject-matter of the suit may be only of the value of Rs. 1500/-, but the decree granted by the High Court may result in the defendant therein being obliged to remove buildings worth more than Rs. 20,000/- so as to give vacant possession of the land in accordance with the decision of the High Court. In such a case, though the value of the

subject-matter in dispute before the High Court may be only Rs. 1500/-, the judgment can be considered to involve indirectly a claim or question respecting property (in this case the buildings) of the value of not less than Rs. 20,000/-. Such a case may attract Article 133(1)(b). The position before us is entirely different. The judgment of the High Court has only adjudicated upon the subject-matter of the specified claim of the workmen which was, as mentioned earlier, for a particular period. That judgment does not involve directly, or indirectly, apart from the subject-matter of the writ petition, any claim or question respecting property or money of the value of Rs. 20,000/- and more. In this view, we are of the opinion that the certificate granted by the High Court under Article 133(1)(b) is not valid and proper.

40. In the view that we take that the certificate granted by the High Court is not valid and that the appeal brought on such a certificate is not sustainable, we do not express any opinion on the merits, though arguments were heard on the same.

41. As the certificate issued by the High Court under Article 133(1)(b) is not proper and valid, the only course open to us to revoke the certificate and set aside the order of the High Court granting the same. The result is, the appeal has become unsustainable, as it has been brought to this Court on a certificate which, as held by us, has not been properly and validly granted.

42. In the result, C.M.P. No. 1300 of 1972 is allowed, and the appeal is held to be not maintainable and as such dismissed. In C.M.P. No. 1300 of 1972 the respondents will be entitled to costs. In the appeal there will be no order as to costs.

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