

Ratnagiri District Central Co-Operative Bank Ltd.

Vs.

Dinkar Kashinath Watve and Others

Civil Appeal No. 520 of 1989

(G. L. Oza, K. N. Saikia JJ)

27.01.1989

ORDER

1. Special leave granted. Heard learned counsel for the parties.
2. The only question involved in this matter is as to whether the High Court was right in holding that a Letters Patent Appeal will not lie against the judgment delivered by a learned Single Judge in a petition which was filed under both the Articles 226 and 227 of the Constitution. Having gone through the judgment of the learned Singh Judge and the Division Bench and having heard learned counsel for the parties, in our opinion, the question about the scope of Letters Patent Appeal under clause 15 has been clearly laid down by this Court in a judgment reported in *Umaji Keshao Meshram v. Radhikabai* [1986 Supp SCC 401 : (1986) 1 SCR 731] wherein it was observed as follows at pages 837-38 : (SCC p. 473, para 107)

"Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [(1955) 1 SCR 1104 : AIR 1955 SC 233 : 10 ELR 216] before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh v. Karan Singh* [AIR 1957 All 414 : 1957 All LJ 389 (FB)] and by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dass* [AIR 1959 Punj 291 : 61 Punj LJ 315] and *Barham Dutt v. Peoples' Co-operative Transport Society Ltd., New Delhi* [AIR 1961 Punj 24 : 62 Punj LR 916 : ILR (1961) 1 Punj 283] and we are in agreement with it."

3. It is clear that so far as the present case was concerned the relief granted by the learned Singh Judge clearly indicate that he was exercising jurisdiction under Article 226 and not under Article

227 of the Constitution and in this view of the matter and in the light of what has been laid down by this Hon'ble Court in the judgment referred to above a Letters Patent Appeal under clause 15 would be maintainable before the Division Bench of the High Court. The appeal is, therefore, allowed and the judgment passed by the learned Division Bench is set aside. The matter is sent back to the High Court and it is expected that the Division Bench will hear the appeal on merits and dispose it of in accordance with law expeditiously preferably within four months from today.

4. The appeal is disposed of accordingly. No orders as to costs.

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