

P. D. Jain, Managing Director, Indo Europe Food Limited

Vs

Oswal Agro Mills Ltd. and Another

Interlocutory Application Nos. 1 and 2 of 1990 in Special Leave Petition No. 4709-10 of 1990

(M. N. Venkatachaliah, N. D. Ojha, J. S. Verma JJ)

16.03.1990

ORDER

1. We have heard Shri K. N. Bhat, learned senior advocate for the petitioner and Shri S. S. Ray and Dr. Shankar Ghosh, learned senior advocates for the respondent-company.
2. Petitioner-P. D. Jain, claiming to be the Managing Director of Messrs Indo Europe Food Limited, a company incorporated in the United Kingdom, which, it is averred, has since been struck off from the Register of Companies, seeks special leave to appeal to this Court from decree dated May 9, 1989 made by the learned Single Judge of the Delhi High Court in Suit No. 1917 of 1986. Petitioner who was not eo nomine party to the suit has also sought leave to prefer the petition for special leave. In view of the averments that the company against which the decree is passed has been struck off from the Registers and the further case of the petitioner that the decree affects the rights and interests of the petitioners, we grant him leave to file the petition. However, the special leave to appeal, for reasons to be indicated presently, cannot be granted.
3. The decree sought to be appealed against, following, as it does, an order refusing leave to defend in a summary suit is, it is not disputed, appealable to the Division Bench of the High Court. Shri K. N. Bhat however, sought to maintain, somewhat strenuously, that having regard to the particular circumstances under which the leave to defend was refused and the consequential decree made and having regard further to the fact that the petitioner would be exposed to heavy liability towards court fee, it is otherwise a fit case in which this Court should entertain the appeal directly from the Single Judge's decree. Shri Bhat said that in the circumstances of the case the right of appeal is an onerous one and the petitioner should not be compelled to have resort to such an onerous remedy. Shri Bhat said that the proposition of prosecuting such an appeal at this stage is best with difficulties of limitation as well.
4. We are afraid, we cannot accept this submission. If the petitioner is not able to pay the court fee, it is open to him to seek to prosecute the appeal as an indigent person. We do not want to go into and pronounce here on that status of the petitioners. It appears to us that the proper course for the petitioner is to prefer and prosecute the remedy by way of an appeal before the Division Bench of the High Court.
5. Two points, however, require to be concluded between the parties. The first is as to the bar of limitation in regard to the proposed appeal. We direct that if the appeal is lodged in the High Court within a period of three weeks from today, the appeal shall be treated as one in which the delay in its filing is condoned.

6. The second pertains to the grant of leave to file the appeal. this question assumes materiality in view of the fact that petitioner was not a party to the original proceedings in the suit in which the decree has come to be made and that he seeks to prosecute the appeal as the erstwhile Managing Director of the company on the ground that the decree prejudicially affects his own rights and interests. In the circumstances, we direct that the High Court shall proceed on the premise that such leave to file the appeal has been granted to the petitioner. In all other aspects, the appeal shall be dealt with in accordance with law.

7. At this petition for special leave is a composite one - preferred both against the said decree in Suit No. 1917 of 1986 and also against the order in C. M. P. No. 28 of 1987 - this order pertains to and disposes of the first part of it relating to the decree in Suit No. 1917 of 1986. This petition insofar as it pertains to the order in C. M. P. No. 28 of 1987 will be dealt with separately.

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