

SUPREME COURT OF INDIA

State of M.P.

Vs.

Gaylord Chemicals

C.A. Nos. 1133-1134 of 2009

(D.K. Jain and R.M. Lodha JJ)

20.02.2009

ORDER

1. Delay condoned.

2. Leave granted.

3. Both these appeals arise out of order dated March 14, 2007, passed by the High Court of Madhya Pradesh, Bench at Indore in Writ Appeal No. 180 of 2007, whereby the appellate Bench has dismissed the intra-Court appeal preferred by the appellants before us under the Madhya Pradesh Uchha Nayayalaya (Khand Nyaupith Ko Appeal) Adhinyam, 2005 (for short the Adhinyam) as not maintainable. The said appeal had been filed by the appellants against order dated 5th July, 2005, passed by a learned Single Judge of the High Court. The Division Bench held that the order impugned in the appeal was, in substance, passed by the learned Single Judge in exercise of his jurisdiction under Article 227 of the Constitution and therefore, in terms of proviso to Section 2 of the Adhinyam, intra- Court appeal was specifically barred.

3. We have heard learned counsel for the parties. We have also perused the writ petition filed by the appellants in the High Court. We are of the view that the Division bench was not justified in dismissing the appeal on the stated ground. It is evident from the body of the writ petition that the writ petitioner had invoked the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution, seeking issuance of an appropriate Writ of Certiorari, quashing the orders passed by the sub-divisional officer-cum-competent authority and the Revenue Commissioner under the M.P. Lok Parisar (Bedakhali) Adhinyam, 1974. The learned Single Judge allowed the writ petition and set aside both the orders with certain directions. Moreover, the grounds taken in the writ petition go to show that primarily it was a petition under Article 226 of the Constitution and the order passed by the Single Judge was also under the said Article. A Similar controversy, with reference to clause 15 of the Letters Patent of the Bombay High Court, came up for consideration of this Court in *Umaji Keshao Meshram & Ors. vs. Radhikabai, Widow of Anandrao Banapurkar & Anr.*¹. In that case, it was held that where the ..3/- C.As. 1133-1134/2009... :

3: 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 of justice to party and in order not to deprive him of 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 of the Constitution. The ratio of the said decision squarely applies on facts in hand. As noted earlier, the writ petition had been filed in the High court both under Articles 226 and 227 of the Constitution. Once, the writ petition was entertained and allowed on merits, it cannot be said that the Single Judge had exercised his jurisdiction only under Article 227, as held by the Division Bench. For all these reasons, we are of the opinion that the Division Bench erred in holding that the appeal was not maintainable against order dated 5th July 2005, passed by the ..4/- C.As. 1133-1134/2009... :

4: learned Single Judge. Consequently, we set aside the impugned order and remand the appeal preferred by the appellants herein to the Division Bench for its decision on merits. We may note that although in the impugned order, it is mentioned that the appeal is barred by limitation but no final decision on the application seeking condonation of delay, filed along with the writ appeal, seems to have been taken. It will be open to the Division Bench to pass appropriate orders on the said application. In view of the fact that matter is quite old, we would request the High Court to decide the appeal as expeditiously as practicable. The appeals are allowed in the above terms with no order as to costs.

¹(1986) *suppl. SCC 401*