

SUPREME COURT OF INDIA

S.B.Minerals

Vs.

MSPL Limited

S.L.P.[C] No.29213 of 2009

(R.V.Raveendran)

23.11.2009

ORDER

R.V.Raveendran, J.

1. The respondent filed a suit for declaration and injunction against the petitioner. The suit was decreed. The petitioner filed an appeal and the first appellate court allowed the appeal and dismissed the suit. Feeling aggrieved, the respondent filed a regular second appeal under section 100 of the *Code of Civil Procedure (for short 'CPC')*. By order dated 8.10.2009, the High Court admitted the appeal formulating three substantial questions of law. In view of the urgency expressed, the High Court directed that the appeal be set down for final hearing in November, 2009.

2. The respondent has sought leave to file an appeal against the 'order' of admission of the second appeal. The petitioner contends that the case did not involve any substantial question of law and the second appeal ought not to have been admitted.

3. Sub-section (5) of section 100 CPC provides that a second appeal shall be heard on the substantial questions of law formulated by the Court. It also provides that the respondent, at the hearing of the second appeal, can argue that the case does not involve such questions. Thus the substantial questions of law formulated by the High Court are not final, and it is open to the petitioner herein (who is the respondent in the pending appeal) to demonstrate during hearing that no substantial question of law arose for consideration in the case and that the second appeal should be dismissed.

4. An order admitting a second appeal is neither a final order nor an interlocutory/interim order. It does not amount to a judgment, decree, determination, sentence or even "order" in the traditional sense. It does not decide any issue but merely entertains an appeal for hearing.

5. The scope of Article 136 is no doubt very wide. Special leave to appeal can be granted under Article 136 against any judgment, decree, determination, sentence or order passed or made by any court or tribunal, in any case or matter. There are no limitations upon the

discretionary power of this Court under Article 136, except those which are self- imposed. One recognised area where the discretion is not exercised is where the remedy by way of an appeal or revision is available against the order. Another recognised area is where the subject matter is stale or frivolous or cantankerous or where the stakes or issue involved is so small and negligible, that grant of leave or even issue of notice will cast a heavy burden in terms of expense, time and energy on a poor or ordinary respondent.

6. There is a third recognised area of exclusion relating to orders which do not decide any issue. Orders admitting a petition/appeal/revision, or orders issuing notice to show cause why a petition/appeal/revision should not be entertained, or an order merely adjourning a case, fall under this category. Extraordinary situations leading to irreversible injustice can of course be exceptions to the exclusion. This case falls under the third category of exclusion, but does not fall under the exception to the exclusion.

7. It is a matter of concern that there is a noticeable increase in the number of special leave petitions against such `non-orders' referred to as orders.

8. The special leave petition is dismissed.