SUPREME COURT OF INDIA

Mohd. Saud

Vs.

Dr. (Maj.) Shaikh Mahfooz

C.A.Nos.9321-9322 of 2010

(Markandey Katju and T.S.Thakur JJ.)

25.10.2010

JUDGMENT

Markandey Katju, J.

1. Leave granted.

2. These appeals have been filed against the impugned judgments of the Orissa High Court dated 24.9.2008 in LPA No.7 of 2008 and dated 25.10.2008 in LPA No.8 of 2008.

3. Heard learned counsel for the parties and perused the record.

4. The facts have been mentioned in the impugned judgment of the High Court and hence we are not repeating the same here.

5. The short question in the case is whether a Letters Patent Appeal (for short `LPA') is maintainable before the Division Bench against the judgment of the learned Single Judge of the High Court. Dated 6.8.2008. Since there was conflict of opinion between different Division Benches of the High Court on the point whether the LPA was maintainable in view of the amendment of Section 100A CPC the Full Bench was constituted, and by the impugned judgment it was held that the LPA was not maintainable in view of Section 100-A CPC.

6. It may be mentioned that the proceedings arose out of an interim order dated 9.9.2005 passed by the Additional District Judge, Fast Track Court No.III, Bhubaneswar in Civil Suit No.498 of 2004. The Civil Suit is still pending, but against the aforesaid interim order dated 9.9.2005 a first appeal under Order 43 Rule 1 being FAO No.386 of 2007 was filed before a learned Single Judge of the High Court who decided it on 6.8.2008. Against the judgment of this learned Single Judge dated 6.8.2008 the LPA was filed. It has been held to be not maintainable by the impugned judgment.

7. Before deciding the question involved in this case we may refer to the relevant provisions in the C.P.C.

8. Section 100-A of the Code of Civil Procedure (hereinafter called `the Code') was inserted by Amendment Act 104 of 1976. The said Section initially read as follows:

> "Section 100-A : No further appeal in certain cases :
>
> Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal."
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> The said Section was amended by Amendment Act 46 of 1999 as follows:
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> Section 100-A:
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> No further appeal in certain cases:
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> Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, (a) Where any appeal from an original or appellate decree or order is heard and decided.
>
> (b) Where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution, by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge."
>
> This amendment was however not given effect to. Again Section 100-A of the Code was amended by Act 22 of 2002 and the amended Section reads as follows:-
>
> Section 100-A: No further appeal in certain cases:
>
> Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original, or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge."

9. The Full Bench by the impugned judgment has held that after the introduction of Section 100-A with effect from 1.7.2002, no Letters Patent Appeal shall lie against the judgment or order passed by a learned Single Judge in an appeal. The Full Bench has held that the

decision of the Division Bench of the High Court in *Birat Chandra Dagra vs. Taurian Exim Pvt. Ltd. & Anr.*[1] (vide page 5) does not lay down the good law while the decision of Division Bench in *V.N.N. Panicker vs. Narayan Patil & Anr.*[2] lays down the correct law. The Full Bench has further held that after the amendment of Section 100-A w.e.f. 1.7.2002 no LPA shall lie against the order or judgment passed by a learned Single Judge even in an appeal arising out of a proceeding under a Special Act.

10. It has been held in a catena of decisions of this Court that an appeal is a creature of a statute and not an inherent right vide *Garikapati Veeraya vs. N. Subbiah Choudhry Ors.*[3]. This right of appeal can be taken away or curtailed by a subsequent enactment vide in *Kamal Kumar Dutta & Ors. vs. Ruby General Hospital & Ors.*[4].

11. The validity of Section 100-A C.P.C. has been upheld by the decision of this Court in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India*[5].

12. The Full Benches of the Andhra Pradesh High Court vide *Gandla Pannala Bhulaxmi vs. Managing Director, APSRTC & Anr.*[6], the Madhya Pradesh High Court in *Laxminarayan vs. Shivlal Gujar & Ors.*[7], and of Kerala High Court in *Kesava Pillai Sreedharan Pillai vs. State of Kerala & Ors.*[8] have held that after the amendment of Section 100-A in 2002 no litigant can have a substantive right for a further appeal against the judgment or order of the learned Single Judge of the High Court passed in an appeal. We respectfully agree with the aforesaid decisions.

13. In *Kamala Devi vs. Khushal Kanwar & Anr.*[9], this Court held that only an LPA filed prior to coming into force of the Amendment Act would be maintainable.

14. In the present case the LPA was filed after 2002 and hence in our opinion they are not maintainable.

15. Learned counsel for the appellant, however, submitted that Section 100-A does not bar a LPA against a judgment of the learned Single Judge who had decided an appeal under Order 43 Rule 1 against an interlocutory order of the District Judge. He submitted that Section 100-A after its amendment in 2002 requires that the judgment of learned Single Judge should be a judgment and decree of such Single Judge. He further submitted that in the present case the learned Single Judge was hearing an appeal against an interlocutory order of the learned Additional District Judge and hence when the learned Single Judge decided the appeal he was not passing any decree because the suit was still pending.

16. Learned counsel submitted that there is a difference in the language of Section 100A as initially inserted in 1976, and the language of the provision as substituted in 2002. While the former barred an L.P.A. even against a judgment, decision or order of a learned single Judge which was not a decree, the latter bars only a judgment which is also a decree. Since the judgment of the learned Single Judge dated 6.8.2008 was not a decree he submitted that the L.P.A. against that judgment was not barred.

17. While at first glance this argument may appear plausible but when we go deeper into it, we will realize that it has no merit.

18. It would be strange to hold that while two appeals will be maintainable against interlocutory orders of a District Judge, only one appeal will be maintainable against a final judgment of the District Judge.

19. It may be noted that there seems to be some apparent contradiction in Section 100-A as amended in 2002. While in one part of Section 100-A it is stated "where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court", in the following part it is stated "no further appeal shall lie from the judgment and decree of such Single Judge". Thus while one part of Section 100-A refers to an order, which to our mind would include even an interlocutory order, the later part of the Section mentions judgment and decree.

20. To resolve this conflict we have to adopt a purposive interpretation. The whole purpose of introducing Section 100-A was to reduce the number of appeals as the public in India was being harassed by the numerous appeals provided in the statute. If we look at the matter from that angle it will immediately become apparent that the LPA in question was not maintainable because if it is held to be maintainable then the result will be that against an interlocutory order of the District Judge there may be two appeals, first to the learned Single Judge and then to the Division Bench of the High Court, but against a final judgment of the District Judge there can be only one appeal. This in our opinion would be strange, and against the very purpose of object of Section 100-A, that is to curtail the number of appeals.

21. It is well settled that the modern method of interpretation is purposive vide *Directorate of Enforcement vs. Deepak Mahajan Anr.*[10], *Hindustan Lever Ltd. vs. Ashok Vishnu Kate Ors.*[11] (vide page 631) and *Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation*[12].

22. We are of the opinion that the apparent contradiction in Section 100A as amended in 2002 was only due to bad drafting, and not much can be made out of it once we understand the purpose of Section 100A.

23. For the reasons given above we are of the opinion that the Full Bench of the High Court has taken a correct view. Thus there is no force in these appeals, which are accordingly dismissed. No costs. CIVIL APPEAL NOS. 9323-9324 OF 2010 [arising out of Special Leave Petition (Civil) Nos.13684-85 of 2009]

24. Leave granted.

25. These appeals have been filed against the order of the learned Single Judge dated 6.8.2008 in first appeal from order no.386 of 2007 of the Orissa High Court. The appeal

before the learned Single Judge arose out of an interlocutory order passed by the learned Additional District Judge, Fast Track Court-III in a suit which is still pending.

26. In our opinion, though the judgment of the learned Single Judge is a final judgment, it is in another sense an interlocutory order as it is well settled that an appeal is a continuation of the original proceedings. Since the original order of the learned Additional District Judge was an interlocutory order, hence the appeal against that order and the judgment of learned Single Judge in that sense was also interlocutory.

27. It is well settled that this Court does not ordinarily interfere under Article 136 of the Constitution with interlocutory orders.

28. For the reasons given above, we dismiss these appeals without going into the merits of the case. However, we direct the learned Additional District Judge to decide the suit expeditiously. No costs.

[1]*2006(11) OLR 344*
[2]*2006(2) OLR 349*
[3]*AIR 1957 SC 540*
[4]*2006 (7) SCC 613*
[5]*AIR 2003 SC 189*
[6]*AIR 2003 AP 458*
[7]*AIR 2003 MP 49*
[8]*AIR 2004 Ker 111*
[9]*AIR 2007 SC 663*
[10]*(1994) 3 SCC 440*
[11]*(1995) 6 JT 625*
[12]*(1985) 4 SCC 71*