

ALLAHABAD HIGH COURT

Deoki Nandan

Vs.

State of U.P.

Supreme Court Appeal No. 104 of 1957

(O.H. Mootham, C.J. and A.P. Srivastava, J.)

12.05.1958

JUDGMENT

O. H. Mootham, C.J.

1. This is an application for leave to appeal to the Supreme Court from an order of an appellate Bench of this Court dated 25-10-1957, dismissing an appeal from an order of the Court on its original side rejecting a petition under Article 226 of the Constitution. It is common ground that the order of this Court involves directly or indirectly a claim respecting property of a value much in excess of Rs. 20,000 and the applicant contends that he is entitled as of right to a certificate under Article 133(1) of the Constitution. This claim is resisted by the respondents on the ground that as the order of this Court on its appellate side affirmed the decision of the Court on its original side, it is necessary for the Court further to certify that the appeal involves some substantial question of law; and that no such question arises.

2. Now clause (1) of Article 133, so far as is material for the present purpose, reads thus :

"133 (1) An appeal shall be to the Supreme Court from any judgment, decree or final order of a High Court..... if the High Court certifies :

(a)

(b)

(c).

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law." It is clear, therefore, that a certificate that the appeal involves a substantial question of law is only necessary when "the judgment, decree or final order appealed from" affirms the decision of the Court

immediately below. The judgment, decree or final order appealed from is necessarily the judgment, decree or final order of the High Court, and the conclusion would appear to be irresistible that the phrase "the Court immediately below" must refer to a Court which is below the High Court. On the plain reading of the clause it would appear therefore that the case before us is not one to which the concluding words of the clause have any application.

3. The provisions of Article 133(1) of the Constitution are derived from Sections 109 and 110 of the Code of Civil Procedure. That Code assumes the existence of a hierarchy of courts on the basis of Acts such as the Bengal, Agra and Assam Civil Courts Act. In this hierarchy the High Court is one court, the functions of which may be performed by a Judge sitting singly or by a Bench of Judges; as the Madras High Court said in *Jamna Das v. Sabapathy Chetty*¹, when considering an argument that a particular appeal lay to the original side of the Court :

"This argument is based on the assumption that the original side of the High Court is a different court from the Appellate Side. This in our opinion, is quite fallacious. The Court is one, but it exercises both original and appellate jurisdiction."

Provision for appeals within the High Court is not found in the Code but in its Chapter or its Rules, and in those cases in which an appeal is allowed it is invariably from the judgment of one Judge of the High Court. When the High Court in such cases exercises its appellate jurisdiction the Judge whose judgment is under appeal is not a Court subordinate to it and his decision cannot be revised under Section 115 of the Code : *Debendra Nath Das v. Bibudhendra Mansingh*²,

4. The authorities on the question now being considered are not uniform. In ILR 43 Cal 90 : AIR 1916 Calcutta 973, the Court of first instance as well as the lower appellate Court had decided adversely to the applicant. On appeal to the High Court a single judge reversed the decree of the lower appellate court. From this judgment there was an appeal to the High Court under Clause 15 of the Chapter, with the result that the judgment of the single Judge was reversed by a Bench of two Judges. "It will thus be seen", said Sir Lawrence Jenkins, C.J.,

"that the first judgment of the High Court reversed the decree of the Court immediately below, but that this reversal was afterwards in effect cancelled, with the result that the only effective judgment of the High Court affirmed the decision of the Court immediately below. This appears to me to be the true result of the Letters Patent and the Code, for the Code makes no provision for an appeal within the High Court, that is to say, from a single Judge of the High Court. This right of appeal depends on clause 15 of the Chapter."

In the subsequent Full Bench case of the Lahore High Court, *Haji Wahid-Uddin v. Makhan Lal*³, a distinction was made between those cases in which the Judge sitting singly was exercising an appellate jurisdiction (as in *Debendra Nath Das* case) and those in which the Judge was exercising original jurisdiction. Din Muhammad and Abdur Rahman, JJ. were of opinion that in

the former case the Judge sitting singly was not a "Court immediately below" the bench hearing the appeal from his judgment, whereas he was such a Court when exercising original jurisdiction.

¹ ILR 36 Mad 138

³ AIR 1944 Lah 458

² ILR 43 Cal 90 : AIR 1916 Cal 973

Blacker, J. found himself unable to distinguish between the status of a single Judge in the two cases, and although he would have had "the very strongest inclination" to follow the decision of Jenkins, C.J. in Debendra Nath Das' case, he considered himself precluded from doing so by the judgment of the Privy Council in the early case of *Tulsi Persad Bhakt v. Benayak Misser*⁴, which, in his view, compelled him to hold that the Judge sitting singly and the appellate Bench were separate courts. In *Probhawati Kunwar v. Panmal Lodha*⁵, also the view was taken that a Judge sitting singly on the original side constituted a court below the appellate Bench, but Debendra Nath Das' case, was not cited and the judgment of Derbyshire, C.J., appears to have been passed largely on the usage which in his opinion had prevailed with regard to the word 'Court'.

5. In ILR 23 Cal 918, the Privy Council had before it an appeal from a judgment of the High Court at Calcutta affirming the judgment of Mr. Justice Wilson on the original side of that Court. The grounds upon which leave to appeal to the Privy Council was granted do not appear from the report, but Lord Davey in delivering the judgment of the Judicial Committee said :

"Their Lordships think that no question of law either as to construction of documents or any other point, arises on the judgment of the High Court, and that there are concurrent findings of the two Courts below on the oral and documentary evidence submitted to them. That being so the present appeal cannot be entertained."

We think that the word "entertained" was used in the sense of 'allowed', for in the next paragraph Lord Davey said :

"There were several other issues, but really no argument has been addressed to their Lordships upon them. There does not seem to be any ground whatever for impeaching the finding of the learned Judge, confirmed by the High Court, on the other issues that were raised....."

This case was regarded by Blacker J. in AIR 1944 Lahore 458, as conclusively deciding that a Judge sitting singly on the original side of a High Court and the appellate Bench of that Court are separate and distinct Courts the former being immediately below the latter. With respect, we think that the learned Judge is reading into the judgment more than their Lordships intended to convey. The question which we have now to consider was not before their Lordships, and we do not think that in the first of the two paragraphs which we have quoted Lord Davey intended to say more than that there were concurrent findings of fact of the trial Judge and the appellate Bench.

6. In our opinion, the view taken by Sir Lawrence Jenkins in ILR 43 Cal 90 : AIR 1916 Calcutta 973, is correct, and we cannot see that any real distinction can be drawn between a Judge sitting singly in the exercise of original jurisdiction and in the

⁴ ILR 23 Cal 918

⁵45 Cal WN 1002

exercise of appellate jurisdiction; in either case he is exercising a function which is directed to be performed by the High Court. It appears to us logically untenable to hold that the High Court is not one Court, and if that be so then 'the Court immediately below' within the meaning of Clause (1) of Article 133 of the Constitution must be a court other than the High Court. We are therefore of opinion that the applicant in this case is entitled as of right to a certificate under that Article without an additional certificate that the case gives rise to a substantial question of law. The requisite certificate will accordingly issue.

Order accordingly.