ANDHRA PRADESH HIGH COURT

Vadlapatla Marayya

Vs.

Vallabhaneni Butchiramayya

Civil Misc. Petn. No. 4822 of 1961

(P. Chandra Reddy, C. J. and Narasimham, J.)

18.08.1961

JUDGMENT

Narasimham, J.

1. This is an application for a certificate of this Court to appeal to the Supreme Court against the judgment of this Court in L.P.A. No.66 of 1959 dated 15-7-60 setting aside the judgment of our learned brother, Sanjeeva Row, Nayudu J. dated 2-4-1959 in A.A.O. No.209 of 1959 and restoring the adjudication of the petitioners as insolvents made by the Additional District Judge, West Godavari in I.P.14 of 1954 on 11-8-1958.

2. I.P.14 of 1954 was filed by the creditors of the petitioners on 15-9-1954 alleging that an act of insolvency was committed in that the petitioner's landed property was sold on 31-8-1954 in execution of a money decree obtained against them in O.S. No.477 of 1952 on the file of the Court of the District Munsif, Eluru. After admission of the petition, an interim Receiver was appointed. It would appear that the interim receiver deposited the amounts due under the decree and the execution sale was subsequently set aside. The petitioners contend that inasmuch as the execution sale was set aside later, that would not be an act of insolvency. Repelling that contention, they were adjudicated insolvents by the order of the District Judge dated 11-8-1958.

3. Against the judgment of the District Judge, the petitioner preferred C.M.A. No.209 of 1958 to this Court. Our learned brother, Sanjeeva Row Nayudu J. allowed the appeal and set aside the adjudication taking the view that an execution sale that was not confirmed would not be regarded as act of insolvency. Against that judgment dated 2-4-1959 the matter came up before in L.P.A. No.66 of 1959. We set aside that judgment as the view taken could not be sustained by preponderance of authority.

4. The petitioners now seek a certificate to prefer an appeal to the Supreme Court alleging that the properties of the petitioners, who have been adjudicated insolvents, would not be less than Rs. 20,000/- that further the judgment of this Court is one of reversal and that it involves a substantial question of law.

5. The petition is opposed. The averments in the counter affidavit are to the effect that the properties of the insolvents-petitioners would not be worth more than Rs. 16,000/- that their total indebtedness was Rs. 25,000/- that further the judgment of this Court in L.P.A. No.66 of 1959 is one of affiramance of the order of the District Judge, that no substantial question of law is involved and that as certificate as prayed for could issue.

6. The principal questions, which arise for consideration are :

> 1. Whether the amount or value of the subject matter of the dispute is not less than Rs. 20,000/-;
> 2. Whether the judgment of this Court in L.P.A. No.66 of 1959 is one of affiramance of the decision of the Court immediately below to it, the Additional District Judge West Godavari; and
> 3. Whether the appeal involves a substantial question of law.

7. As there appears to be some controversy in respect of the amount or value of the subject matter of dispute, the learned counsel have addressed us prominently on the other two questions.

8. Sri Rajabhushana Rao for the petitioners has urged that it cannot be said that the judgment of this Court in L.P.A. is one of affirmance being a reversal of the decision of the Court immediately below it, which, according to him, is the Court of the single Judge of this Court, our learned brother, Sanjeeva Row Nayudu J. in C.M.A. No.209 of 1958.

9. We may pertinently read the relevant article of the Constitution here :

> "Article 133 (1) An appeal shall lie to the Supreme Court from any judgment,
> decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies -
> (a) that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or
> (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or
> (c) that the case is a fit one for appeal to the Supreme Court.

and where the judgment, the decree of 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 questions of law".

10. With reference to the later part of the Article, in substance Sri Rajabhushana Rao's argument is that a Bench presided over by a Single Judge of this Court is a Court immediately below the Letters Patent Bench.

11. There is no controversy that a single Judge had passed the order in exercise of the appellate jurisdiction vested in the High Court. It is also clear and well beyond controversy that the letters

patent Bench exercised powers by virtue of clause 15 of the Letters Patent. This provision for letters patent appeal is for the regulation of the internal or domestic business of the High Court which under the Constitution is one for each State.

12. The Constitution of the High Court is expressed in Article 216 of the Constitution which is unambiguous in its intendment and purport that every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. Under Article 215 of the Constitution, every High Court shall be a Court of record.

13. These provisions adumbrate the concept of the High Court being one for the State and a Court of record. The business of the High Court is as such shared by the Judges for the time being comprising the High Court. The matter of allocation of the business of the High Court is also regulated by the letters patent.

14. The argument that a Bench of the High Court presided over by a single judge is a Court below that of a Bench of the same High Court presided over by more judges than one, does not fit in with what has been expressed supra. 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 it within the meaning of clause (1) of Article 133 of the Constitution must be a Court other than the High Court.

15. Now turning to the authorities on the point, the first decision to be noticed in *Debendra Nath v. Bibudhendra Mansingh*[1], where the question was directly raised. In the said case the facts were that the decision of a learned Judge of the High Court sitting as an appellate Judge was set aside on a Letters Patent Appeal by a Bench of the High Court and the decision of the Special Judge, Cuttack, was restored. That is to say, the judgment of the High Court reversed the decree of the Court immediately below arid that reversal was afterwards cancelled, with the result, that there was only one effective judgment of the High Court which affirmed the decision of the Court immediately below the High Court. This is how Jenkins, C.J. explained the legal position:

> "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 charter.

And here I may point out that Judge sitting alone is not a court subordinate to the High Court but performs a function directed to be performed by the High Court (claust 36 Letters Patent). And thus no decision of a single judge can be revised under Section 115 of the Code".

16. The said reasoning and conclusion were referred to with approval by a Full Bench

[1] ILR 43 Cal 90

of the Lahore High Court in *Wahid-ud-Din v. Makhan Lal*[2] Din Mahammad J. who delivered the judgment of the majority in the said case expressed the view (at page 248) that a single judge sitting on the appellate side is the High Court in himself and held (at page 250) that a Judge of the High Court sitting alone on the appellate side is not a Court immediately below the Letters Patent Bench which hears an appeal from his decision.

17. Blacker J. found himself unable to agree, in the view that an inference to the contrary is warranted by the decision of the Privy Council in *Tulshi Persad Bhakat v. Benayek Misser*[3],

18. We have perused the Privy Council decision cited carefully; but, we are unable to understand the decision as suggestive of a contrary proposition. In that case the appeal arose out of a suit for foreclosure of two mortgages made by the 1st defendant in the action, one Tulsi Persad Bhakt, in favour of the respondent before the Privy Council, Tulsi Persad Bhakt being the appellant before the Privy Council. The first mortgage was dated 11-5-1885 and the second, a further charge, was dated 28-11-1885. The principal defense upon which the learned counsel for the appellant had addressed their Lordships was that the appellant was a minor on 11-5-1885 when the first mortgage was executed. The appellant was admittedly of age on the date of the further charge. The suit was tried in the first instance by a learned Judge sitting on the original side of the High Court at Calcutta. The learned judge gave a finding on the evidence that the appellant was not a minor on the date of the first mortgage dated 11-5-1885. The matter was carried in appeal to the High Court. The learned Judges of the appellate Court affirmed that finding of the learned trial Judge. On further appeal to the Privy Council, their Lordships thought that no question of law arose on the judgments of the High Court as they were concurrent, and rejected the appeal observing thus :

> "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"

These observations were construed as leading to a necessary inference that a single judge on the original side of the High Court is below the appellate Bench. Blacker J. seemed to think that he could see no difference between a single Judge of the High Court trying an original case and a single Judge hearing an appeal and so differed from the majority. It is obvious that the Privy Council was not called upon to decide a point as is posed before us. The dissenting Judge invoked the Privy Council decision by analogy. In the instant case, we are not called upon to express our view as to whether a single Judge of a High Court disposing of cases on the original side is a Court below the appellate Bench of the same High Court. In so far as the question posed before us here is concerned, it may well foe said that that the Privy Council in the aforecited case has not decided to the contrary.

19. *Deoki Nandan v. State of U.P*[4]. adopted the views

[2] ILR (1945) 26 Lah 242 : AIR 1944 Lah 458 [3] ILR 23 Cal 918 (P.C) [4] AIR 1959 All 10

expressed in ILR 43 Cal 90 and by the majority of the Full Bench in ILR. (1945) 26 Lah 242 : AIR 1944 Lahore 458. Rererring to the Privy Council case, their Lordships expressed that they did not think that Lord Davey intended to say more than that there were concurrent findings of fact of the trial Judge and the appellate Bench. The learned Chief Justice Mootham, who spoke for the Court expressed his agreement with the view propounded in ILR 43 Cal 90 and further expressed that they did not see that any real distinction could be drawn between a Judge sitting singly in the exercise of original jurisdiction and in the exercise of appellate juris diction, in either case he was exercising a function which was directed to be performed by the High Court. It was further expressed that the Court immediately below occurring in Article 133 of the

Constitution must be understood as a Court other than the High Court.

20. *Sathappa Chettiar v. Umayal Achi*[5], is a decision of a Division Bench of the Madras High Court which expressed their complete agreement with ILR 43 Cal 90 and the majority of the Full Bench in ILR (1945) 26 Lah 242 : AIR 1944 Lahore 458. In the said decision the Madras Bench held that for the purposes of Article 133 (1) of the Constitution the High Court on the original side presided over by a single Judge is a Court immediately below the High Court on the appellate side. The instant Case is not directly covered by the Division Bench of the Madras High Court but is only relevant as expressing complete agreement with the Calcutta and Lahore decisions referred to above.

21. We may in this context refer to a recent ruling of the Supreme Court in *Narain Das v. State of Uttar Pradesh*[6] The question before the Supreme Court was whether an appeal lies to the Supreme Court against an order of rejection by the High Court of an application under Section 476 of the Code of Criminal Procedure. Narain Das moved an application under Section 476 of the Code of Criminal Procedure for making a complaint under Section 193 Indian Penal Code, against Phanish Tripathi alleging that a certain statement in an affidavit filed by the latter was false. The learned Judge of the Allahabad High Court, who heard this application, rejected the same. Against the said order, an appeal was sought to be filed under Section 476B of the Code of Criminal Procedure. The learned Judges of the Supreme Court held that such an appeal did not lie to the Supreme Court. This is what the learned Judges have held :

> "Any person aggrieved by an order of a Court under Section 476 of the Code may appeal in view of Section 476-B to the Court to which the former Court is subordinate within the meaning of Section 195 (3) which provides that for the purposes of the section a court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original Civil jurisdiction within the local limits of whose jurisdiction such civil Court is situate. The decrees of a Single Judge of the High Court exercising civil jurisdiction are Ordinarily appealable to the High Court under clause (10) of the Letters Patent of the Allahabad High Court read with clause 13 of the United Provinces High Courts (Amalgamation) Order, 1948 It is true that the

[5] AIR 1959 Mad 391

[6](1961) 1 S C J 375

> decision of a single judge of the High Court is as much a decision of the High Court as the decision of the appellate Bench hearing appeals against his decrees. But the Court constituted by the Single Judge is subordinate to the Appellate Bench of the High Court in view of the artificial judicial subordination created by the provisions of Section 195 (3) to the effect 'a court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees....."

22. The observations of the Supreme; Court, which are of great consequence and relevancy, in this context are that the decision of a single judge is as much a decision of the High Court as the

decision of the appellate Bench hearing appeals against his decrees, and further that the relevant, provision of the Criminal Procedure Code created an artificial judicial subordination for the specific purpose. This is suggestive necessarily of the legal position that there would be no warrant for artificial judicial Subordination by an analogy. We thus see a consensus of authority that a single Judge of a High Court sitting as an appellate Bench is not a Court below the Letters Patent Appeal Bench of the same High Court.

23. Sri Rajabhushana Rao has relied on a Division Bench ruling of the Nagpur High Court in *Kishanlal Nandlal v. Vithal Nagayya*[7], In that case the Letters Patent Bench reversed the judgment of a single Judge in second appeal who had reversed the judgment of the District Judge. It was contended that the decision of the Division Bench restoring that of the District Judge was one of the affirmation and that the single Judge is not a Court immediately below the division Bench. In support of that position reliance was placed on ILR 43 Cal 90 and ILR (1945) 26 Lah 242 : AIR 1944 Lahore 458 (FB).The learned Judges differed from the said rulings, adopted the analogy of Blacker, J. in the dissenting judgment in the Lahore case and held that the decision of a single Judge of the High Court was a decision of the Court immediately below the High Court.

24. It is apparent that Blackes J.'s decision rested on a mere analogy extending the application of the ruling of the Privy Council in ILR 23 Cal 918 which in our view, does not necessarily follow. The decision cited in support of the position contended for by Sri Rajabhushana Rao, in our view, does not help him against the consensus of authority.

25. For all these reasons, we are of the view that the decision of a single judge of this Court is not a decision of the Court immediately below the Letters Patent Appeal Bench and that the judgment of the letters Patent Bench is one of affirmance of the decision of the Court immediately below it, to wit, the District Judge.

26. The next point is if the appeal involves a substantial question of law. The view taken by the learned District Judge that the petitioners had committed an act of insolvency within the meaning of Section 6 Sub-section (e) of the Provincial Insolvency Act is supported by *Venkatakrishnayya v. Malakondayya*[8] which was followed by a Bench of the Nagpur High Court in *Gulab Chand v.*

[7] AIR 1956 Nag 276

[8] 1942-1 Mad LJ 38

Durga Bank Ltd[9]*.,* and *Kanialal v. Tinkari De*[10]*,* We do not consider that the matter involves any substantial question of law within the meaning of Article 133(1) of the Constitution.

27. In the view that we have taken, it does not matter even if we could assume that the subject-matter of the dispute is not less than Rs. 20.000/-.

28. For the said reasons we find ourselves unable to certify as prayed for by the petitioners.

The petition is dismissed with costs.
Petition dismissed.

[9] AIR 1954 Nag 286

[10] AIR 1933 Cal 564