DELHI HIGH COURT

Begum Aftab

Vs.

S. Lal Chand. (Delhi)

R.F.A. (O.S.) No.10 of 1968.
(I. D.Dua, C. J.S. K. Kapur and S. N. Andley, J.)

31.5.1968

JUDGEMENT

Inder Dev Dua, C. J.

1.The question which this Full Bench is called upon to decide relates to the amount of court-fee payable on appeal presented by an aggrieved party under section 10 of the Delhi High Court Act (hereafter called the Act) against the judgment of a learned Single Judge of this High Court given in the exercise of ordinary original civil jurisdiction conferred by the Act, to a Division Court thereof. Section 10 may now be read:

> "10. Powers of Judge: (1) Where a Single Judge of the High Court of Delhi exercises ordinary Original civil jurisdiction conferred by sub-section (2) of section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court. (2) Subject to the provisions of sub-section (1) the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi."

The distinctive features of this provision are that it provides for an appeal from a judgment and not from a decree and the appeal lies from the judgment of a Single Judge to a Division Court of the same High Court. It is worth noting that the judgment of a Single Judge, as also that of the Division Court on appeal, acting within their respective jurisdictions, are both considered to be judgments of the High Court. The

controversy, we may point out, centers round a very narrow point. It is agreed, and is common case of the parties, that if court-fee is not payable in accordance with Article 11, Schedule II of the Court Fees Act, then it would indisputably fall within the purview of Article 1 of Schedule I, which provides for payment of ad valorem court-fee computed on the amount or value of the subject matter in dispute on appeal. We are therefore, only confined to the scope and effect of these two Articles. These articles, so far as relevant, may now be read:

= COURT-FEES ACT, SCHEDULE I.
= Ad valorem fees.

Number	Proper Fee
1. Plaint written statement pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in the Act or of cross-objection presented to any civil or Revenue Court except those mentioned in column 3.	"When the amount or value of the subject-matter in dispute does not exceed
* * *	* * *

It is not necessary to reproduce the remaining contents of columns

2 and 3 because it is only the contents of column 1 which require construction.

= SCHEDULE II

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented -	(a) to any civil Court Other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority; (b) To a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority."

In this case also, it is not necessary to reproduce the contents of column 3. Suffice it to

say that the court-fee is a fixed amount. The short argument on behalf of the appellant is that the present appeal is not from a decree or from an order having the force of a decree and, therefore, it falls within Article 11 of Schedule II and not within Article 1, Schedule I, which, for our purpose, is a residuary Article. It is added that reading these two Articles together it must follow that Article 1, Schedule I, so far as appeals are concerned, is confined only to appeals from decrees and orders having the force of decrees. The cogency of this argument depends on the meaning of the word "judgment" used in section 10 of the Act. No decision directly covering the construction of this section has been brought to our notice, but by way of analogy, reference has been made to the decisions construing the meaning of the word 'Judgment' occurring in clause 10 of the Letters Patent of the High Court of Judicature at Lahore and in clause 15 of the Letters Patent constituting the High Courts of Judicature at Calcutta and Bombay. Reference has also been made to the definitions of the words "judgment" and "decree" contained in section 2 (9) and (2) respectively of the Civil P. C. We shall have to see, among other things, as to how far these definitions are helpful in construing the word "judgment" as used in section 10 of the Act.

2. Turning first to the definitions as contained in the Code, it may be pointed out that those definitions, as the opening part of section 2 suggests, are confined to the Code itself and are in addition subject to repugnancy. Now, according to the scheme of the Code, as is discernible from Part VII, it is only decrees and certain orders which are made appealable and the word "judgment", as defined in section 2 (9), merely means the statement given by the Judge of the grounds of a decree or order. The scheme of section 10 of the Act is clearly different and quite obviously, the definitions of the Code cannot have any direct bearing on the problem we are required to solve.

3. Let us now turn our attention to clause 10 of the Letters Patent of the Lahore High Court. It reads as under:

> "10. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one

> Judge of the said High Court or one Judge of any Division Court, pursuant to section i08 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided."

Clause 15 of the Calcutta, Bombay and Madras High Courts is identical, and being substantially to the same effect, need not be reproduced. The word "judgment" in this clause has been construed somewhat liberally and it is not synonymous with a decree, final or preliminary, in a suit.

Shri Parkash Narain, the learned counsel for the Union of India, has however, drawn our attention to a decision of the Privy Council in *Sevak Jeranchod Bhogilal v. The Dakore Temple Committee,*[1] in which the term "judgment" in the Letters Patent has been construed to mean, in civil cases, a decree and not a judgment in the ordinary sense. The language used in the decision of the Privy Council is somewhat general, though the Judicial Committee was apparently concerned only with clause 39 of the Letters Patent of the Bombay High Court. Following this decision, a Division Bench of the Patna High Court in *Gobind Lal v. Administrator-General of Bihar,* [2] observed that if one of the parties comes and asks the Judge of the High Court to recall his earlier order under his power of review or under his inherent power, and the Judge merely refuses to take any steps in the matter, then such an order is not a judgment within the meaning of clause 10 of the Letters Patent.

An earlier Bench decision of the same High Court also seems to have taken a similar view in *Banwari Lal v. Shukrullah,*[3] The Privy Council decision seems also to have been followed by the Rangoon High Court in *Dayabhai Jiwandass v. Murugappa Chettyar,* [4] and by the Nagpur High Court in *Bhiwara v. Mt. Renuka,* [5] As noticed earlier, the Privy Council was concerned with clause 39 and not clause 15 of the Bombay High Court. The phraseology of clause 39, it is not disputed, is materially different from clause 15, and indeed this distinction has been noticed by a Bench of

the Lahore High Court in *Shibba Mal v. Rup Narain,* [6] where it is observed as under. -

> "Now, the learned Counsel on both sides are unable to explain why their Lordships of the Privy Council, after holding that no appeal was competent, not only heard the appeal but accepted it. Mr. Kishan Dayal placed his reliance upon the solitary sentence in the judgment of the Privy Council, which says that the term 'judgment' in the Letters Patent of the High Court means in Civil cases 'a decree and not a judgment in the ordinary sense,' and urges that no appeal lies under Clause 10 from an adjudication unless it amounts to a 'decree' as defined by section 2, Civil P. C. This contention runs counter to the view of all the High Courts in India, which have never placed such a narrow construction upon the term 'judgment'.

It must be remembered that their Lordships of the Privy Council were dealing with Clause 39, Letters Patent of the Bombay High Court, which provides for an appeal to the Privy Council from a 'final judgment, decree or order', and that the clause which gives the right of appeal from a single Judge to a Division Bench makes no mention of the word "final.' The Privy Council apparently intended to point out that the word 'judgment' as used in Clause 39 is not to be taken in the sense in which that expression is used in the Civil Procedure Code; where a distinction is drawn between a judgment and a decree.

The observations relied upon by Mr. Kishan Dayal may not be free from ambiguity; but there can be no doubt that the expression 'judgment' as used in Clause 10, Letters Patent cannot be held to be synonymous with the word 'decree' and that there is no warrant for curtailing the scope of that clause in the manner suggested by him. Indeed, it has been expressly decided by a Division Bench of this Court in the *Firm Badri Das Janki Das v. Mathanmal,* [7] that an order rejecting an application for staying further proceedings in pursuance of a preliminary decree amounts to a 'judgment'. In view of this authority, which is admitted to be on all fours with the present case, the preliminary objection must be overruled." The Lahore High Court was of course concerned with clause 10 of its own Letters Patent which is similar to clause 15 of the Letters Patent of the Bombay High Court.

4. Without dealing at length with some other decisions which have distinguished the Privy Council decision, we feel that we have to construe the word "judgment" in section 10 of the Act in its own context and in the background of its own statutory scheme and that the ratio of the Privy Council decision merely goes to suggest that the word "judgment" as used in the Letters Patent may not be restricted to the literal

definition of the expression "judgment" as contained in the Civil P. C. The Letters Patent, when providing for appeals from judgments, in our view, contemplate judgments which have both the effect of a decree as defined in the Code and of such order as may affect the merits of a controversy between the parties by determining some disputed right or liability. A judgment may thus be either final or preliminary or interlocutory. In order to decide whether an adjudication should be treated as a "judgment" within the meaning of clause 10 of the Letters Patent, we feel that regard should be had not to the form of the adjudication but to its effect upon the suit or the civil proceeding in which it is made. If its effect, whatever its form and whatever the nature of the proceeding in which it is made, is to put an end to the suit or proceeding, or if its effect, if not complied with, is to put an end to the suit or proceeding, the adjudication is indisputably a "judgment" within the meaning of this clause. Other decisions or determinations adjudicating upon a disputed controversy on the merits in a suit or proceeding may also appropriately fall within the contemplation of the word "judgment". It is not possible to lay down any definite rule which would meet the requirements of all cases and all that we may say is that in determining whether an order or decision constitutes a "judgment" or not, the Court has to take into consideration the nature of the order and its effect upon the suit or the civil proceeding in which it is made. Each case would thus depend on its own peculiar facts and circumstances.

5. We have arrived at this conclusion on the plain reading of section 10 of the Act in the background of the statutory scheme. In our view, the draftsman could neither have intended to restrict the right of appeal only to final judgments disposing of the entire suit, nor could he have intended it to extend to all orders made during the course of trial, however ministerial or procedural in their nature or ineffectual on the rights of the parties.

6. For the purpose of court-fee also therefore, the Court will have to consider in each case whether the judgment falls within the contemplation of Article 11, Schedule II, because of its not amounting to a decree in the sense of finally disposing of a suit or an order having the force of a decree or whether it is a judgment which, without so amounting, otherwise materially affects the rights of the parties so as to give rise to a right of appeal under Section 10 of the Act. It may be observed that in the case in hand, the competency of the appeal is not in question, and indeed it is common ground that the judgment is appealable. The only question which arises for our consideration is whether "the present is an appeal from a decree or from an order having the force of

a decree or whether it is an appeal from a judgment which is neither a decree nor an order having the force of a decree. It is also contended at the bar that the Court-fees Act, being a fiscal statute, unless it clearly falls within Article 1, Schedule I, which provides for ad valorem court-fee, this Court must give benefit of doubt to the citizen and hold that a fixed court-fee is payable in this case under Article 11, Schedule II. This argument seems to us to be somewhat misconceived. If the judgment does not fall within the plain meaning of Article 11, Schedule II, then appeal, which is admittedly competent, would be governed by Article 1, Schedule I.

7. In the present case, the judgment has indisputably disposed of the suit finally, with the result that nothing more remains to be done in the trial of the suit. Whether a decree is also to be framed in agreement with the judgment under the Civil P. C. is, in our opinion, immaterial because the Act does not take notice of decrees and in terms it provides for appeals only from judgments. The judgment under appeal, however, conclusively determines the rights of the parties with regard to the matters in controversy in the suit and it embodies in itself the formal expression of the adjudication. Merely because as a result of the adjudication, it purports also to grant a decree, would not deprive the judgment of the characteristics of a decree for the purposes of Court Fees Act. This judgment must, therefore, be held to amount to a decree and, therefore, excluded from the operation of Article 11, Schedule II. The Act, it may be remembered, does not define either "judgment" or "decree". It merely makes the judgment appealable under Section 10. To be appealable, as hereinbefore discussed, the judgment, broadly stated, must be more than a mere statement given by the Judge of the grounds of a decree or order; in other words, it must contain or embody a decision on a dispute affecting the merits as well. In the case before us, the judgment also contains all the criteria of a decree and this indeed is not contested. We are, therefore inclined to hold that this case quite clearly falls within the purview of Article 1, Schedule I and is subject to payment of ad valorem court-fee.

8. The learned Counsel for the parties have cited a number of decisions with the object of showing that the judgment can neither amount to a decree nor to an order having the force of a decree and that, therefore, the present case must necessarily fall within Article 11, Schedule II. We do not consider it necessary to refer in details to all the cases cited because none of them deals with the Act. The decisions dealing with Clause 10 of the Letters Patent of the Lahore High Court and clause 15 of the Letters Patent of the Calcutta and Bombay High Courts, do seem to be of some assistance, but few of them deal with the question of court-fee, with the result that the ratio decidendi

of most of these cases does not throw much helpful light on the problem which we are called upon to solve. Without elaborately commenting on them, we may merely notice them in passing. In *Palaniappa v. M. R. Krishnamurthy,* [8] an order granting leave to sue in forma pauperis was held to be a judgment and, therefore, appealable. In *Rajinder Parshad v. Punjab State,* [9] an order dismissing a writ petition on the ground of delay was held to be a judgment subject to appeal under clause 10 of the Letters Patent. In *Mohd. Felumeah v. S. Mondal,* [10] it was observed that a judgment within the meaning of clause 15 of the Letters Patent (Calcutta) could not be construed as a decree under the Civil P. C. and an ad interim injunction during the pendency of writ proceedings was held to amount to a "judgment". In *Union of India v. Khetra Mohan,*[11] there is an exhaustive discussion on the test as to what is a final and what is an interlocutory judgment. In that case, a suit was brought by the plaintiff on the original side of the Calcutta High Court against the Union of India for a sum of money. The trial Judge, after recording his decision on several issues, directed a reference for the ascertainment of the amount due and payable by the defendant to the plaintiff. The referee was directed (i) to take accounts on the footing of certain measurements for ascertainment of the amount due to the plaintiff; (ii) to determine the market rate for items of work done by the plaintiff and (iii) to ascertain whether there had been an increase in the rate of labour charges in respect of certain excess quantity of work done. In an appeal preferred by the defendant, an objection was taken by the plaintiff that the decision of the trial Judge was not a judgment. It was held that so far as direction (i) was concerned, it should be held to be a 'judgment' within clause 15 of the Letters Patent and the order should be considered as a whole and it amounted to a preliminary decree and thus a 'judgment' within the meaning of clause 15 of the Letters Patent. On this reasoning, it was held appealable on the basis of a decision of the Privy Council in *Ahmed Musaji Saleji v. Hasham Ebrahim Saleji,*[12] In *Sultan Singh v. Jai Chand,* [13] a learned Single Judge of the Punjab High Court sitting on Circuit in Delhi, laid down that an order of the Rent Controller or the Rent Control Tribunal under the Delhi Rent Act, 1958 does not become an order having the force of a decree merely because it is executable as a decree. The order, therefore, was held not to fall within Article 7, Schedule I, Court Fees Act. We do not consider it necessary or proper to express any opinion on the correctness or otherwise of this view. Suffice it to say that this decision does not throw much light on the question before us. According to the Supreme Court in *Asrumati Debi v. Rupendra Deb,* [14] an order for transfer of a suit under clause 13 of the Letters Patent of the Calcutta High Court is not a "judgment" within the meaning of clause 15 and no appeal lies therefrom because it neither affects

the merits of the controversy between the parties in the suit itself, nor terminates or disposes of the suit on any ground. In this judgment, there is illuminating discussion as to the meaning of the word "judgment".

In *State of U. P. v. Dr. Vijay Anand,* [15] the order of a Division Bench dismissing an application for review of an order under Article 226 of the Constitution was held to be a "judgment" within the meaning of clause 10 of the Letters Patent of the Allahabad High Court. In the body of the judgment, the Court declined to reconcile the decisions of the Madras High Court on the one hand and those of Calcutta and Nagpur High Courts on the other on the interpretation of the word "judgment." It was, however, noticed that there was a cleavage of opinion of the scope of the expression "judgment." In *Shankarlal v. Shankarlal Poddar,* [16] it was observed that orders passed by the District Court or by a Single Judge of the Calcutta High Court in the matter of winding up petitions are appealable under section 202 of the Companies Act independently of the provisions of sections 96 and 104 of the Code or of clause 15 of the Letters Patent and it would be sufficient if the order is judicial as distinguished from administrative or ministerial order. The Court left open the question of the scope of the expression "judgment" in the Letters Patent. In *Taxing Officer v. Jamnadas Dharamdas,*[17] a decree passed by the Tribunal under the Displaced Persons (Debts Adjustment) Act, 1951 made appealable under section 40 of that Act was held not to amount to a decree within the meaning of the Court Fees Act. In any event, the award made by the Tribunal under that Act was not regarded as a decree within the meaning of Schedule II, Article 11, Court Fees Act, with the result that the memorandum of appeal filed under section 40 of that Act was held to fall for payment of court-fee, under Schedule II, Article 11. In *Irshad Husain v. Bakshish Husain,* [18] an order for quashing the proceedings under section 20, U. P. Encumbered Estates Act, was held not to amount to an order having the force of a decree and was, therefore, governed by Schedule II, Article 11, Court Fees Act. In *Kanwar Jagat Bahadur Singh v. Punjab State,* [19] an award of compensation made by an arbitrator acting under the Punjab Requisitioning and Acquisition of Immovable Property Act was held neither to amount to a decree nor an order having the force of a decree, with the result that an appeal against such an award was held to fall under Article 11, Schedule II, Court Fees Act. In *Official Liquidator v. M. U. Qureshi,* [20] .an executable order made under the Companies Act of 1913, which is enforceable under section 199 thereof in the same manner as a decree, was held to fall for the purposes of court-fee under Article 11, Schedule II, Court Fees Act. According to *Gokal Chand v. Sanwal Das,*[21] the term 'judgment' in clause 10 of the Letters Patent (Lahore) includes any interlocutory

judgment which decides, so far as the Court pronouncing the judgment is concerned, whether finally or temporarily, any question materially in issue between the parties and directly affecting the subject matter of the suit. In the reported case, an order on an application to stay execution pending appeal was held to be a judgment and, therefore, appealable. In *Vastulal Pareek v. Pareek Commercial Bank Ltd,*[22] an appeal against an order passed on a claim made by a Bank under section 45-B of the Banking Companies Act, after the commencement of its winding up proceedings, was held to fall, for purposes of court-fee, under Schedule II, Article 11, Court-fees Act. In *Dundappa v. S. G. Motor Transport Co., (P) Ltd.*[23] an appeal against an order refusing to wind up a company was held to be liable to court-fee under Article 11, Schedule II, Court Fees Act. In *Kanak Sunder Bibi v. Ram Lakhan Pandey,* the word "decision" in Article 133 (1) of the Constitution was held equivalent to the word "decree". In *Ram Prasad v. Tirloki Nath,* [25] an order under section 5 (1), U. P. Agriculturists' Relief Act of 1934 was held not to have the force of a decree and on appeal from such an order, Court-fee was payable under Article 11, Schedule II, Court Fees Act.

9. As a result of the foregoing discussion, we hold that in the present case the memorandum of appeal is liable to payment of ad valorem court-fee under Article 1, Schedule I of the Court Fees Act.

10. S. K. Kapur, J. : I agree.

11. S. N. Andley, J. : I agree.

Order accordingly.

Cases Referred.

1. AIR 1925 P. C. 155,

2. AIR 1955 Patna 56,

3. AIR 1933 Patna 139.

4. AIR 1935 Rangoon 267,

5. AIR 1947 Nagpur 159.

6. AIR 1928 Lahore 904,

7. AIR 1922 Lahore 185

8. AIR 1968 Madras 1 (FB),

9. AIR 1966 Punjab 185 (FB),

10. AIR 1960 Calcutta 582,

11. AIR 1960 Calcutta 190,

12. ILR 42 Cal 914 .

13. 1966 Delhi LT 62,

14. 1953 SCR 1159

15. AIR 1963 Supreme Court 946,

16. AIR 1965 Supreme Court 507,

17. AIR 1956 Bombay 563,

18. AIR 1946 Oudh 254,

19. AIR 1957 Punjab 32,

20. AIR 1945 Lahore 146 (FB)

21. AIR 1920 Lahore 326,

22. AIR 1964 Rajasthan 202,

23. AIR 1966 Mysore 150,

24. AIR 1956 Patna 325 (FB),

25. AIR 1938 Allahabad 50,