

# DELHI HIGH COURT

Union of India

Vs.

Hafiz Mohd.

Supreme Court Applns. Nos. 229 and 235 of 1972.

(T. V. R. Tatachari, V. S. Deshpande, S. Rangarajan, B. C. Misra and Rajinder,  
Sachar, JJ.)

17.8.1973

## JUDGMENT

**Sachar, J.**

1. This order will dispose of S. C. A. 229 and 235 of 1972.
2. This is an application under Article 133 (1) (a) (b) and (c) of the Constitution of India against the judgment of Full Bench dated March 2, 1972.\*
3. In a suit which was being tried by a learned Single Judge of this court under its ordinary original civil jurisdiction, it was held that the suit with respect to two khasra numbers out of four was maintainable. The defendant appellant filed an appeal against this order of the learned Single Judge. The question rose before the Bench was that as the order of the learned Single Judge was not one of those orders which were specified in Section 104 read with Order 43, Rule 1 of the Civil Procedure Code, 1908, the appeal was not maintainable. The appellant had, however, contended that the appeal was maintainable in view of Section 10 (1) of the Delhi High Court Act (26 of 1966) (hereinafter called the Act) which provided that where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-section (2) of Section 5. an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court. As the matter raised an important question of law the appeal was referred to a larger Bench.
4. Before the bench it had been argued by the appellant that in order to find out whether an appeal lies against, the order passed by a single Judge in exercise of ordinary civil jurisdiction, all that had to be found out was whether it was a judgment and in order to find out whether it was a judgment or not, the test laid down by the

various High Courts when interpreting the expression 'judgment' to be found in the Letters Patent constituting the High Courts was to be looked into. In our judgment, we noticed that right up to the passing of the Act there was no authoritative pronouncement of precise definition of the term 'judgment' in the Letters Patent. We referred to the fact that prior to the passing of the Act in this part of the territory the law as to which orders were appealable was well settled and that this depended solely on finding whether the orders were those falling in Section 104 read with Order 43. Rule 1 of the Civil Procedure Code. We, therefore, took the view that when the legislature provided in Section 10 (1) of the Act that an appeal shall lie from the judgment of the Single Judge to the Division Court it must have meant to refer to the expression 'judgment' in the same term as defined in Civil Procedure Code and to continue existing law and practice. We also held that to accept the contention of the appellant that the test given in various decisions under the Letters Patent should be applied to interpret the word 'judgment' in Section 10 (1) of the Act is to impute illogical intention to the legislature and suggest that it wanted to create confusion and conflict in this area which had been free from it up till then. We also held that Section 10 (1) of the Act was not meant to provide for an appeal against the order which has never been held appealable in this territory before. We consequently finally held that apart from the order which has the force of a decree an appeal will only lie against those orders passed by a single Judge which are covered by Section 104 read with Order 43, Rule 1, Civil Procedure Code and no appeal will lie against those orders which are outside this provision. As the impugned order of the learned single Judge was admittedly not one of the orders specified in Section 104 read with Order 43, Rule 1, Civil Procedure Code the same could not be held to be a judgment within the meaning of Section 10 (1) of the Act, and, therefore, no appeal was competent. We consequently dismissed the appeal.

5. This application was filed on May 8, 1972. Clause (1) of Article 133 of the Constitution of India has been substituted by a new clause (1) by the Constitution (Thirtieth Amendment) Act, 1972, which came into force from February 27, 1973 and reads as under:-

"(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 case involves a substantial question of law of general importance; and

(b) That in the opinion of the High Court the said question needs to be decided by the Supreme Court." Sub-section (2) of the Amendment further provides that no appeal shall lie to the Supreme Court under clause (1) of Article 138 of the Constitution from any judgment, decree or final order arising out of a suit or other civil proceeding which was instituted or commenced in any court before the commencement of this Act unless such appeal satisfied the provisions of that clause as amended by this Act.

6. In the present case though the suit as well as the application for leave to appeal, was instituted prior to the amendment but the certificate can only be granted in terms of new clause (1) of Article 133 and not the old one. This position was fairly conceded by Mr. Saharya appearing for the appellant. The requirement for giving certificate has now become very stringent in view of the amendment of clause (1) of Article 133. A Division Bench of this court while dealing with the scope of this amendment in *1 Union of India v. Jayantilal Kuberdas Katakia*<sup>1</sup> has in interpreting it observed as under:-

"A certificate can be granted only if the case involves a question of law:-

- (i) Which is not only substantial but is also of general importance; and
- (ii) The said question, in our opinion, needs to be decided by the Supreme Court.

It has to be noted that all the above requirements should be satisfied before a certificate can be granted. It means that it is not sufficient if the case involves a substantial question of law of general importance but in addition to it the High Court should be of the opinion that such question needs to be decided by the Supreme Court. Further, the word 'needs' suggests that there has to be a necessity for a decision by the Supreme Court on the question, and such a necessity can be said to exist when, for instance, two views are possible regarding the question and the High Court takes one of the said views. Such a necessity can also be said to exist when a different view has been expressed by another High Court.

It was further observed in by a Division Bench of this Court in *Y. K. Mathur v. The Commr. M. C. D. etc.*<sup>2</sup>, 'It is apparent that there must be some imperative necessity arising from the fact and circumstances of the case before we can certify it to be fit one to prefer an appeal to the Supreme Court.'

7. In the present case the bench unanimously took the view that the appeal under Section 10 (1) of the Act was only maintainable if the order fell within Section 104 read with Order 43 Rule 1 of the C, P. C. We had no doubt in our mind that it could

not have been contemplated by the legislature when passing the Act to make a complete break with the past as to the position about the orders which were appealable and to make the position vague and uncertain. We also did not find any prejudice to the litigating public on the interpretation given by us. In these circumstances we are unable to hold that the decision is such that it needs to be decided by the Supreme Court. No doubt the matter before us had raised an important question of law but in view of the thirtieth amendment, that requirement itself is not sufficient to entitle the party to get a certificate for leave to appeal. It is further to be certified that there is some compelling necessity and for that purpose the High Court is of the opinion that the matter needs to be decided by the Supreme Court. It may further be noticed that the interpretation of the word 'judgment' under Section 10 (1) of the Act was given on the particular facts and the historical background of this area and the interpretation of this is applicable only within the jurisdiction of Delhi and does not serve this as a precedent for the High Court's outside as they are not governed by this Act. No occasion, can, therefore, arise of other High Courts taking a contrary view to the one taken by us because in the very nature of things the Act being only applicable in Delhi, the question of interpreting Section 10 (1) of the Act cannot arise in the other High Courts. We, therefore, are not persuaded to hold that the requirements of Article 133 (1) of the Constitution are satisfied.

8. The respondent who appeared in person had also urged that appeal under Article 133 (1) of the Constitution can only lie to the Supreme Court from any judgment or decree or final order of the civil proceedings and as according to him the proceedings in the suit were still pending it cannot be said that our decision was a final order within the meaning of Article 133 (1) of the Constitution and that, therefore, the certificate cannot be granted on this ground. We were referred to *Tarapore and Co. v. V/O. Tractors Export, Moscow*,<sup>3</sup> in this connection. In view of the fact that we are not inclined to give a certificate on the ground mentioned above, we do not propose to deal with this point.

9. The result is that the petition is dismissed, but in the circumstances of the case there will be no order as to costs.

Petitions dismissed.

Cases Referred.

1. S. C. A. 8 of 1973, decided on 30-03-1973 (Delhi)
2. SCA 43 of 1973, decided on 27-04-1973\*
3. AIR 1970 Supreme Court 1168