

JAMMU AND KASHMIR HIGH COURT

J. and K. Co-operative Bank

Vs.

Shams-ud-din Bacha

Letters Patent Appeal No. 7-G of 1970

(S. Murtaza Fazl Ali, C.J. and Jaswant Singh, J.)

09.06.1970

JUDGMENT

S. Murtaza Fazl Ali, C.J.

1. This is an appeal against an order passed by Jalal-ud-din J. sitting singly exercising jurisdiction under Section 115 of the Code of Civil Procedure read with Section 104 of the Constitution of Jammu and Kashmir.

2. Mr. Raina appearing for the respondent has raised a preliminary objection that the appeal is not maintainable. In support of his objection the learned counsel for the respondent has submitted that no appeal under the Letters Patent lies from an order made under the revisional jurisdiction exercised by a Single Judge of the High Court under Section 115 of the Code of Civil Procedure or from an order made by him in exercise of his supervisory jurisdiction under Section 104 of the Constitution of Jammu and Kashmir. In our opinion the contention raised by Mr. Raina is well founded and must prevail.

3. A perusal of Section 104 clearly shows that the power of superintendence and control over the subordinate courts conferred on the High Court is merely in the nature of a supervisory jurisdiction. This Section corresponds to Article 227 of the Constitution of India as held in a Full Bench decision of this Court reported in AIR 1967 Jammu and Kashmir 98 (FB). It has been consistently held in a number of cases that the jurisdiction conferred by this provision is not an original jurisdiction.

4. In *Hudi Goshaon v. Sudi Goshaon*¹, it was observed:

"Article 227, which is for all practical purposes a revival of Section 107 of the Government of India Act, 1915, is not an Article which in terms provides for writs etc; in this respect it is distinguishable from Article 226 of the Constitution which alone provides for writs etc.

.....

Proceedings under Article 227 are not original proceedings for orders passed in these proceedings are not even amenable to Letters Patent appeals, as has been held by this court in more cases than one." In *Sukhendu Bikash Barua v. Hare Krishna De*², it was held :-

"The relevant expression in Clause 15 of the Letters Patent excludes a judgment pronounced by a single Judge in exercise of the powers of revision or in exercise of the powers of superintendence under Article 227 of the Constitution."

Again in *re V. Tirupulswainy Naidu*³, it was held :-

"Whether the jurisdiction that was invoked fell under Civil P. C Section 115 or Constitution Article 227, it was revisional jurisdiction and no appeal lay under the Letters Patent against the order of the Single Judge. The jurisdiction under Constitution Article 227 is revisional jurisdiction within the meaning of Letters Patent Clause 15."

5. A perusal of the Letters Patent of this court would also show that no appeal is contemplated against an order of the present nature which is passed by a Single Judge. Clause 12 of the Letters Patent runs thus :-

"And we do further ordain that an appeal shall lie to the said High Court of judicature from the judgment (not being a judgment passed 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 the exercise of the power of superintendence) of one Judge of the said High Court or one Judge of any Division court 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, consistently with the provisions of Civil Procedure Code made 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 the judges of the said High Court or of such Division Court shall be to us, Our Heirs or successors and be heard by our Board of Judicial Advisers for report to us."

The above provision of the Letters Patent clearly excludes an appeal from an order made by a single judge of the court in exercise of his revisional jurisdiction, as also an appeal from a sentence or order passed or made by him in exercise of his power of superintendence. An order passed under Section 104 of the Constitution of Jammu and Kashmir is nothing but an order made in exercise of the supervisory jurisdiction conferred on the court by the Constitution. In these circumstances, Clause 12 of the Letters Patent excludes appeals from such orders. The

learned counsel for the

² AIR 1953 Cal 636

³ AIR 1955 Mad 287

appellant has not been able to cite any authority taking a contrary view. In these circumstances, we are satisfied that the present appeal is not maintainable and on this ground alone the appeal is liable to be dismissed.

6. For the foregoing reasons, the appeal is dismissed as not maintainable, but in the circumstances without any order as to costs.

Appeal dismissed.