

BOMBAY HIGH COURT

Narendrabhai Sarabhai Hatheesing

Vs.

Chinubhai Manibhai Seth

O.C.J. Appeal No. 47 of 1935

(John Beaumont, Kt., C.J. and Rangnekar, J.)

06.03.1936

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an appeal from an order made by Mr. Justice B. J. Wadia on a notice of motion to commit defendant No. 1 for breach of an undertaking given to the Court and embodied in an order of the Court dated April 19, 1933. The learned Judge held that no breach of the order was proved which justified him in committing the defendant to prison; he did not dismiss the motion with costs, but made no order on the motion, and left each side to pay its own costs. From that order the appeal is brought.

2. A preliminary objection is taken that no appeal lies, and that question turns upon whether the order appealed from is a judgment within Clause 15 of the Letters Patent. This Court has always acted upon the definition of " judgment" given by the Calcutta High Court in the case of *The Justices of the Peace for Calcutta v. The Oriental Gas Company*¹ where Couch C. J. said (p. 452) :-

We think that ' judgment' in Clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability.

3. It is difficult to see how an order of the Court refusing to commit a man for breach of an undertaking given to the Court can be said to affect the merits of any question between the parties. The undertaking is given to the Court; if it is broken, and that fact is brought to the Court's notice, the Court may take such action as it thinks fit. If it comes to the conclusion that the order has been deliberately broken, it will probably commit the defaulter to jail, but the Court is free to adopt such course as it thinks fit.

4. There seems to be very little authority upon the point.

5. Sir Jamshed Kanga has referred to a decision of this Court in *Narayanrao Vithal V. Solomon Moses*² in which it was held that no appeal lay from an order refusing to commit for contempt of a criminal nature, and he says that the basis of that decision was a

¹(1872) 8 Beng. L.R. 433 : 17 W. R. 364

²(1932) I.L.R. 57 Bom. 286 : 35 Bom. L.R. 9

distinction between contempt of a criminal nature, and contempt of a civil nature such as we have to deal with in the present case. But it appears from the judgment in that case that the Advocate General on behalf of the respondent admitted that the order sought to be appealed from was a judgment within Clause 15 of the Letters Patent. So that the point which we have to consider in this case was not before the Court in that case.

6. The only direct authority on the point seems to be a decision of a full bench of the Calcutta High Court in the case of *Mohendra Loll Mitter v. Anundo Coomar Mitter*³ in which it was held that an appeal lay from an order refusing an application to commit for contempt of Court. The learned Judges merely expressed the opinion that the order was appealable, and dealt with it upon the merits. They gave no reasons for their decision, and they appear to have relied largely upon the English cases which were cited to them. The law in England is different because there is no English enactment corresponding to Clause 15 of the Letters Patent.

7. In my opinion, to hold that this order is appealable would be to depart from the practice which this Court has always followed in adopting the definition of " judgment", to which I have referred. It is impossible to say that this order deals with any question between the parties. It affects only the right of the Court to enforce its own order, and in my opinion such an order cannot be said to be a judgment within the meaning of Clause 15. The decision of the Calcutta High Court is not binding upon us, and in the absence of any reason for supposing that it has been followed in other High Courts, I think we ought not to follow it.

8. I think, therefore, the preliminary objection must be upheld and the appeal dismissed with costs. Cross-objections dismissed with costs. Costs to be set off.

Rangnekar, J.

9. I agree. This appeal is taken from an order of Mr. Justice B. J. Wadia on a notice of motion taken out by the appellants against the respondent for an order that the respondent be committed to jail for committing contempt of this Court by a breach of the undertaking he had given to the Court on April 19, 1933. The appellant alleged that the respondent had committed several breaches of the order which was then made by this Court. Mr. Justice B. J. Wadia held that the appellants had not proved the breaches to his satisfaction, though with regard to one or two there was some suspicion, and refused to commit the respondent for contempt.

10. Mr. Chagla on behalf of the respondent has raised a preliminary objection. He says that the order made by Mr. Justice B. J. Wadia is not a judgment within the meaning of Clause 15 of the Letters Patent. Now, the exact meaning of that expression has given rise to a good deal of controversy in the various High Courts in this country, but so far as this Court is concerned, it has consistently followed a judgment of the Calcutta High Court in the case of *The Justices of the Peace for Calcutta v. The Oriental Gas Company*⁴ In that case Couch C. J. said (p. 452) :-

³ I.L.R. (1897) Cal. 236

⁴(1872) 8 Beng. L.R. 433 : 17 W. R. 364

We think that ' judgment' in Clause 15 means a decision which affects the merits of the question between the parties by determining some right or liability.

Does the order appealed from decide any question between the parties and determine any right or liability ? On the notice of motion there was, in my opinion, no question between the parties. Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made on such an application by which the Court in its discretion refuses to take any action against the party alleged to be in the wrong can be said to raise any question between the parties.

11. Sir Jamshed Kanga, however, relies upon the case of *Mohendra Lall Mitter v. Anundo Coomar Mitter*⁵ where three Judges of the Calcutta High Court were of the opinion that an order like the one we have in this appeal was appealable. No reasons, however, seem to have been given for this opinion, and with all respect to the learned Judges I am unable to agree that an order refusing to commit the party alleged to have committed a breach of the order of the Court is a judgment within the meaning of Clause 15 of the Letters Patent.

12. In these circumstances, I think the preliminary objection must be upheld, and the appeal must be dismissed with costs.

Appeal dismissed.

⁵ I.L.R. (1897) Cal. 236