BOMBAY HIGH COURT

Dajisaheb

Vs.

Shankarrao Vithalrao

Civil Appln. No. 161 of 1950

(Chagla, C.J. and Gajendragadkar, J.)

01.10.1951

JUDGMENT

Chagla, C.J.

1.This is an application for leave to appeal to the Supreme Court. The trial Court dismissed the plaintiff's suit and this Court in appeal set aside the decree of the trial Court and passed a decree in favour of the plaintiff. We sent down an issue to the trial Court to determine the value of the subject-matter of the suit, both at the time the suit was filed and also at the time of the passing of the decree in appeal, and the finding has been now returned to us. The finding is that the value of the subject-matter was between Rs. 11,000 and Rs. 13,000 both at the time of the filing of the suit and also at the time of the passing of the decree in appeal. The finding has not been challenged by Mr. Chandrachud, but his contention is that looking to the provisions of the Constitution the petitioner has no right of appeal to the Supreme Court.

2. Under Article 133(1) of the Constitution,

> "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;"

and the argument that has been advanced by Mr. Chandrachud is that inasmuch as the High Court is not in a position to certify that the value of the subject-matter in dispute is not less than Rs. 20,000, we should not allow the petitioner to appeal to the Supreme Court. It is not disputed that when the suit was filed the petitioner had a right to appeal either to the Privy Council or to the Federal Court. It is also well settled that a right of appeal is not a mere matter of procedure. It

is a vested right and that vested right cannot be taken away retrospectively unless the Court discerns in the legislation dealing with the right of appeal a clear intendment that such right was intended to be taken away. Under Section 110 of the Civil Procedure Code, the right to appeal to His Majesty in Council arose when the amount or value of subject-matter of the suit in the Court of first instance was Rs. 10,000 or upwards and the amount or value of the subject-matter in dispute on appeal was also the same. The jurisdiction of the Privy Council came to an end after Independence and the Indian Legislature passed Act I of 1948 called the Enlargement of Jurisdiction of the Federal Court Act, and by that Act the jurisdiction that was vested in the Privy Council was conferred upon the Federal Court to hear all appeals which lay to the Privy Council under Section 110. By that Act also the amount or value of the subject-matter was the same as the value of the subject-matter under Section 110 of the Civil Procedure Code and then we have the Constitution which under Article 133(1) raised the amount or value of the subject-matter from Rs. 10,000 to Rs. 20,000. Prima facie, if the petitioner had the right to appeal to the highest Court in the land when the suit was filed from which the appeal arises, then there is nothing in the language of Article 133(1) which would lead us to hold that the Constituent Assembly wanted to deprive the litigant of that right. But what is very ingeniously urged before us by Mr. Chandrachud is that the principle of the right of appeal being a vested right only applies when an appeal lies to the same Court. But when a new Court is created by the Consitution and a right of appeal is for the first time granted to that Court, then that principle does not apply. In other words, Mr. Chandrachud's argument is that the Supreme Court was set up as a new Court under the Constitution, its jurisdiction was for the first time defined under the Constitution, and for the first time a litigant was given a right of appeal under Article 133(1). Mr. Chandrachud further says that whatever right of appeal the litigant had was a right of appeal to the Privy Council and the Federal Court. Those two Courts being abolished, that right no longer survives and the litigant is not entitled to say that because he had a right to appeal to a Court which no longer exists he therefore has also a right of appeal to a new Court which has been set up with a different jurisdiction. It may seem at first blush that this is a very attractive argument, but when one considers the different provisions of the Constitution, it seems to us clear that in many respects the Supreme Court was intended to take the place of the Privy Council and the Federal Court. It must not be forgotten that our Constitution makers were not writing on a clean slate. A great deal had already been written on the slate which could not be obliterated, and therefore it is in this context that the various provisions of the Constitution must be construed.

3. Turning first to Article 374 (2), that article provides that all suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of the Constitution shall stand removed to the Supreme Court and the Supreme Court has been given jurisdiction to hear and determine all those matters. Therefore, the effect of the Federal Court ceasing to function and the Supreme Court being set up was not to do away with all matters which were pending before the Federal Court so as to compel the litigant to go afresh to the new Court which had been set up under the Constitution, but to continue as it were the Federal Court in the new Court which was established to the extent of matters pending before the older Court. Then we come to Article 135

and that provides:

> "Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law."

The Constituent Assembly realised the fact that it was conferring jurisdiction upon the Supreme Court by Articles 133 and 134. It also felt that there may be matters in respect of which the Federal Court might have had jurisdiction which were not covered by Articles 133 and 134, and in respect of these matters jurisdiction was expressly conferred upon the Supreme Court. Therefore, reading Articles 133, 134 and 135, the position is that although the Supreme Court may have no jurisdiction under Articles 133 and 134, still if in respect of that matter the Federal Court had jurisdiction, by reason of Article 135, the Supreme Court also would have jurisdiction in respect of that matter. The position is made still more clear when we turn to the Adaptation of Laws Order, 1950. That Order adapts Section 110 of the Civil Procedure Code to bring it into conformity with Article 133(1) and in place of Rs. 10,000 in Section 110 is substituted Rs. 20,000 and the other necessary consequential amendments are made. But what is very significant is that by Section 27, it is provided:

> "Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under any existing law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law."

Therefore, if any right had already been acquired by a party before Section 110 was amended, that right was not taken away by the amendment of Section 110. Now, the right that the petitioner had acquired under Section 110 was to appeal to the Privy Council if the amount or value of the subject-matter in dispute was Rs. 10,000 or more and that right which was a vested right was expressly not taken away by the provisions of Section 27 of the Order. Therefore, although after the Constitution came into force, the jurisdiction of the Supreme Court in civil matters is restricted and the power of the High Court to give a certificate under Section 110 has also been modified, these provisions cannot affect the right which a litigant had already acquired prior to the coming into force of the Constitution and which right has been expressly saved. There is another way that this matter can be looked at. It is not disputed that the Federal Court after 1948 could have entertained this appeal, and once this position is admitted, it becomes a matter in respect of which the Federal Court could have exercised jurisdiction. Therefore, although the Supreme Court under Article 133 cannot exercise jurisdiction in respect of this matter, inasmuch as the Federal Court could have exercised jurisdiction by reason of Article 135, the Supreme Court has been given the same jurisdiction as the Federal Court. Therefore, even if we were to

exclude the jurisdiction of the Supreme Court under Article 133(1), if once it is conceded that the Federal Court had jurisdiction in respect of this matter, then under Article 135, jurisdiction is conferred upon the Supreme Court which may be different from and wider than the jurisdiction conferred upon the Supreme Court under Articles 133 and 134.

4. Mr. Chandrachud had relied on a judgment of the Federal Court in '*Lachmeshwar v. Keshwar Lal*[1]', This decision lays down that until an appeal to the Federal Court had been admitted by the High Court the proceeding must be deemed to be pending before the High Court and it is a proceeding in respect of which the Federal Court cannot exercise

[1] AIR 1941 FC 5

jurisdiction. Therefore, so long as we have not admitted this appeal, the Supreme Court will have no jurisdiction to deal with these proceedings. But once we admit this appeal, it will become a matter in respect of which the Federal Court could have exercised jurisdiction, and, as pointed out before, by reason of Article 135 the Supreme Court will be equally entitled to exercise jurisdiction. Reliance is also placed on a judgment of the Supreme Court in '*State of Seraikella v. Union of India*[2]', In that case the Supreme Court came to the conclusion that notwithstanding the fact that certain proceedings were pending before the Federal Court, the Supreme Court had no jurisdiction to deal with those proceedings because the jurisdiction of the Supreme Court in respect of those matters was expressly barred by the Constitution, and what is relied upon is the observations of Mr. Justice Patanjali Sastri at p. 261, where the learned Judge says that –

> "The Federal Court in which the suits were pending, and which had exclusive jurisdiction to deal with them, was abolished and a new Court, the Supreme Court of India, was created with original jurisdiction strictly limited to disputes relating to legal rights between States recognized as such under the Constitution."

and these remarks are pressed into service for the contention that similarly a new Court is created and jurisdiction is conferred upon it under Article 133 and it is only with regard to matters which fall under Article 133 that the Supreme Court has jurisdiction, and inasmuch as the amount or value of the subject-matter is less than Rs. 20,000, the Supreme Court has no jurisdiction to hear this appeal.

5. It is clear from the judgment that the Supreme Court, in coming to the conclusion that it did, took into consideration two provisions of the Constitution. One was a proviso to Article 131 which expressly barred the jurisdiction of the Supreme Court with regard to the two matters mentioned in that proviso, and it also took into consideration Article 363 which also barred the jurisdiction of the Supreme Court with regard to matters enumerated in that article. Therefore, the view taken by the Supreme Court was that inasmuch as the Constitution had taken away the jurisdiction of the Supreme Court in certain matters, the fact that matters in respect of which jurisdiction had been taken away were pending before the Federal Court did not confer jurisdiction upon the Supreme Court and the mere provision with regard to the removal of the

suits under Article 374(2) could not be read as an article vesting the Supreme Court with a jurisdiction which the Constitution had expressly stated the Supreme Court shall not exercise. This judgment and this argument cannot possibly apply to a construction of Article 133. It is true that Article 133 lays down the jurisdiction of the Supreme Court in matters dealt with by that article. But the Constitution does not provide that the Supreme Court has no jurisdiction to deal with appeals where the amount or value of the subject-matter in dispute is less than Rs. 20,000. On the contrary, it will be perfectly competent to the Supreme Court under Article 136 to give special leave to appeal from any judgment or decree of any Court or tribunal in the territory of India irrespective of the amount or value of the subject-matter. Therefore, whereas in the matter before the Supreme Court there was a complete absence of jurisdiction in the Supreme Court to deal with a particular matter, there is no such absence of jurisdiction in the Supreme Court to deal with appeals, the amount or value of the subject-matter in which is less than Rs. 20,000. Our attention has

[2] AIR 1951 SC 253

also been drawn to the judgments of two High Courts in '*Ramaswami V. Ramanathan*[3]', and in '*Nandlal V. Hiralalsao*[4]', where the same view has been taken as to the right of appeal to the Supreme Court.

6. We have thought it necessary to consider this matter in some detail because our attention was drawn to the fact that there was some conflict in this Court as to the correct interpretation of Art, 133(1) of the Constitution. A Division Bench of this Court had taken the view that Article 133(1) was retrospective in its operation. We should have been most reluctant to take a different view from the view taken by that Bench but we find on perusing the judgment that the matter was not argued before the learned Judges at all and the learned Judges did not have the advantage which we have had of listening to a very careful and well thought out argument advanced before us by Mr. Chandrachud. We, therefore, thought that it would be best to set the doubt at rest as far as this Court is concerned and to hold that in all matters where there was a right of appeal under Section 110 of the Civil Procedure Code, that right continues in respect of all suits filed prior to the coming into force of the Constitution. The Division Bench judgment to which I have made reference is the judgment of Mr. Justice Rajadhyaksha and Mr. Justice Shah in '*Siddappa Bhimappa V. Mallawa*[5]', But both myself and my brother Ganjendragadkar and other Division Benches have consistently taken the view that leave to appeal should be granted to the Supreme Court in circumstances similar to the one which we have before us, and even Mr. Justice Shah who was a party to this judgment had taken a contrary view when sitting with Mr. Justice Bavdekar.

7. We, therefore, make the rule absolute and grant leave to the petitioner to appeal to the Supreme Court under Section 110 of the Civil Procedure Code. Costs to be costs in the appeal to the Supreme Court.

Rule made absolute.

[3] AIR 1951 Mad 251

[4] AIR 1950 Nag 222

[5] Civil Appeal No. 1218 of 1949 (Bom)