PUNJAB AND HARYANA HIGH COURT

The Indian Trade

Vs

Raj Mal Pahar Chand

(Falshaw, C.J. Kapur, J.)

13.03.1956

JUDGMENT

Kapur, J.

1. These are four petitions (Civil Misc. Applns. Nos. 772/0, 773/C, 774/C and 775/C of 1954) for leave to appeal to the Supreme Court against four decrees of this Court reversing the decrees Of the Courts below in the four cases.

2. The facts of the case are given in the judgment in Civil Regular Second Appeal No. 465 of 1951'. The plaintiff brought eleven suits against the Railway claiming various sums of money as compensation for non-delivery of goods. All the suits were dismissed by the trial Court and those decrees were affirmed by the District Judge. Appeals in four cases were brought to this Court in which the decrees passed by the Courts below were reversed and the Insurance Company which was a party defendant has applied for leave to appeal to the Supreme Court consolidating the pecuniary value of the suits for purposes of Jurisdiction.

3. An objection is raised that leave cannot be given as a 'matter of course because even If the appeals are allowed to be consolidated the value does not come to Rs. 20,000/- which is the allowable limit. It is not Rs. 10,000/- any longer. Reliance is placed on a judgment of the Supreme Court in Nathoo Lal v. Durga Prasad, AIR 1954 SC 355 (A). There on review a decree was finally passed in April 1950 when the Jaipur High Court had been abolished and was substituted by the Rajasthan High Court. It was held that the provisions of Article 133 apply to decrees passed after the passing of the Constitution of India and it is the requirements of that Article which have to be fulfilled and the Code of Civil Procedure of Jaipur could not determine the jurisdiction of the Supreme Court and had no relevancy to the maintainability of the appeal and as the requirements of Article 133 had been fulfilled the appeal was competent. The Madras High Court in *Veeranna v. Venkanna*[1], have held that if a judgment is delivered or decree passed after the commencement of the Constitution, then the provisions of Article 133(1) are applicable & that Article 135 applies only where Articles 133 & 134 do not apply. Same view was taken by the Calcutta High Court in Prabirendra Mohan v. Berhampore Bank Ltd. AIR 1954 Cal 289 (C), Where it was held that in judgments passed after the coming into operation of the Constitution the valuation limit is Rs. 20,000/- and not Rs. 10,000/-.
But counsel for the petitioner relies on a judgment of the Bombay High Court in Dajisaheb v.

Shankarrao Vithalrao, AIR 1952 Bom 303 (D) in which it was held that a right of appeal under Section 110, Civil P. C. continues in respect of all suits filed prior to the coming into force of the Constitution and there is nothing in Article 133(1) of the Constitution by which the litigant is deprived of that right and that position is made clear by Section 110, Civil P. C. where Rs. 30,000/- is substituted in place of Rs. 10,000/-. The learned Judges also relied upon Article 135 of the Constitution which confers upon the Supreme Court a different and wider jurisdiction than that under Article 133. Right to appeal, therefore, is not lost because of the abolition of the Privy Council or of the Federal Court or because the matter is not covered by Article 133(1).

4. Article 133(1)(a) provides for leave to appeal to the Supreme Court in the following words:

> "133. (t) 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";

Mr. Shambhu Lal Puri has contended that parties to a suit have a vested right to appeal to the Supreme Court in the same manner as they had in regard to their right of appeal to the Privy Council and as after the abolition of the Privy Council there was a vested right to appeal to the Federal Court and the same right continues in regard to appeals to the Supreme Court also and he submits that because before the Constitution came into force an appeal lay to the Federal Court he can appeal to the Supreme Court Irrespective of the change in the limit of valuation. Now, in my opinion, that is an argument which is not sustainable after the judgment of the Supreme Court themselves in AIR 1954 SC 355 (A), because they have pointed out that the right of appeal to the Court is not to be determined by any Code of Civil Procedure but an appeal lies when the requirements of Article 133(1)(a) are complied with. This only means that where the value is Rs. 20,000/- or more an appeal would lie and not where the value is less than that amount. In the judgment of Patanjali Bastri J. in State of *Seraikella v. Union of India*[2], (E) it 1s said—

> "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 recognised as such under the Constitution." Therefore, the Supreme Court is a new Court although it has inherited some of the jurisdiction of the Federal Court. But in regard to appeals against decrees passed by Courts the Article which Is applicable is Article 133(1) (a) and it cannot be said that in this particular case or in other cases where the suits were filed before the Constitution but were decided after, the limit of pecuniary jurisdiction would continue to be Rs. 10,000/- although the Article itself says that it is Rs. 20,000/- In my opinion and I say so with due respect that the view taken by Madras and Calcutta High Courts in the cases which I have mentioned seems to be in keeping with the view taken by the Supreme Court in 1951 SCR 474 : (AIR 1951 SC 253) (E), and the latest pronouncement of their Lordships seems to confirm the view taken by Madras and Calcutta end I would, therefore, hold that the value for purposes of jurisdiction has to be Rs. 20,000/- as provided by the Constitution and not Rs. 10,000/- as provided by the old Civil Procedure Code.

5. It is then submitted that Article 135 would apply because the provisions of Article 133 do not, but if a specific Article governs the pecuniary limits of an appeal then Article 135 will not be applicable, and I respectfully agree With the Madras view ILR (1953) Mad 1079 : (AIR 1953 Mad 878) (B) that the institution of the suit carries with it the preservation of the vested right of parties in regard to the appeal but with the exception that there is no right of appeal where the right is expressly or impliedly taken away or the Court to which the appeal was to be taken is abolished without there being a provision for appeals which lay to the abolished Court. *Canada Cement Co. V. Town of East Montreal*[3], was a case of this kind. A summary of the Judgment of that Court has been given by Coutts-Trotter C. J. in Vasudeva Samiar In re, 52 Mad 361 : (AIR 1929 Mad 381) (FBI (G) as follows:

> "In that case what was taken away was not the right of appeal but the very Court to which the appeal lay, namely, the Superior Court of Montreal sitting in review. By 10 George v. Chapter 79 (Quebec), the right of appeal was transferred from the abolished Court to the Appellate Side of the Court of King's Bench in Quebec, but no provision was made for the transference of appeals which would have lain to the abolished Court to the newly constituted Appellate Court. In these circumstances their Lordships of the Privy Council held that an appeal from the Circuit Court to the Court of King's Bench did not lie".

8. When the present suits were filed the final Court of appeal would have been the Federal Court and when this Court was abolished on coming into force of the Constitution the proceedings pending in the Federal Court in regard to appeals stood removed to the Supreme Court but there was no provision made as regards proceedings by way of appeal or otherwise not pending in the Federal Court at the commencement of the Constitution. Nor can Article 135 be taken to supply the lacuna to mean that the words "any matter to which the provisions of Article 133 or Article 134 do not apply" can be construed to include a case which did not fulfil the requirements, pecuniary or otherwise, of Article 133.
Article 135 when quoted is as under:--

> "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 decree in the present case was passed after the Constitution and as was pointed out by Rajamannar C, J. in the Madras case at page 1096 (of ILR Mad) (at p. 683 of AIR)—

> "There is another aspect of the question to which I shall briefly refer. It was held in La*chmeshwar Prasad v. Keshwar Lal*[4], that unless an appeal to the Federal Court had been admitted the proceeding must be deemed to be pending before the High Court in respect or which the Federal Court could not exercise jurisdiction.

If that be so, how can it be said that a case in which the decree was passed after the commencement of the Constitution is a matter in relation to which jurisdiction and powers were exercisable by the Federal Court immediately before the commencement of the Constitution? In my opinion it is at least necessary that the Judgment should have been delivered or the decree or

final order passed before the Constitution to say that the Federal Court had any exercisable jurisdiction and powers in relation to a case. Whether it is also necessary that an application for leave should have been filed or granted before that date it is unnecessary to discuss now, as in the present case neither event has happened before the Constitution." In my view, therefore, it must be held that in regard to a judgment which is passed after the Constitution came into force the appeal is to be governed by Article 133(1)(a) and not by Section 110, Civil P. C. as it existed before the Constitution.

7. The next submission of counsel was that leave should be given because it is a fit for appeal under Clause (c) of Article 133(1), i.e. it is a case fit for appeal to the Supreme Court. I cannot find anything in the present case which would bring it within this clause. The petitioner says that his grounds of appeal in paras. 3, 7, 8 and 9 bring it within the phrase "fit for appeal to the Supreme Court" but I am unable to agree because it was not his plea in the Courts below that the suit was not barred by time and the points which he wishes to raise now do not fall within the rule laid down by Lord Hobhouse in *Banarsi Parshad v. Kashi Krishna Narain*[5], as interpreted by the Madras High Court in Ra]a of *Ramnad v. Tiruneelakantam Servai*[6], where it was held that by a question being of private importance is meant private importance to both parties to the litigation and not only to one of them. Therefore, according to the findings of this Court the case is not one which falls within Banarsi Parshad's case (I), and it cannot be Bald that the case is a fit one for appeal to the Supreme Court. I would, therefore, dismiss these petitions with costs.

Falshaw, J.

8. I agree.

Cases Referred.

1ILR (1953) Mad 1079 : (AIR 1953 Mad 678) (PB)
21951 SCR 474 at p. 497 : (AIR 1951 SC 253 at p. 261)
3(1922) 1 AC 249 : (AIR 1921 PC 219) (F)
4(1940) FCR 84 : (AIR 1941 FC 5) (H)
528 Ind App 11 (PC) (I)
6AIR 1923 Mad 232 (J)