

RAJASTHAN HIGH COURT

Rajasthan State Indl. Dev. and Investment Corprn. Ltd.

Vs.

M/s. Modi Thread Mills

D.B. Civil Special No. 40 of 2002
(N.N. Mathur and H.R. Panwar, JJ.)

28.03.2003

ORDER

N.N. Mathur, J.

1. This special appeal is directed against the order of learned Single Judge dated 11.4.2002 whereby he dismissed the application filed by the appellant under Order 41 Rule 19 I.P.C.
2. The relevant facts are that the respondent-plaintiff's suit was decreed against the appellant Rajasthan State Industrial Development & Investment Corporation Ltd. for possession of an industrial plot measuring 2000 sq. ft. at the cost of Rs. 10/- per sq.ft. with development charges. The appellant preferred a regular first appeal against the said judgment and decree dated 3.2.1995 passed by Additional District Judge No. 3, Jodhpur under Section 96 of the Civil Procedure Code before this Court. The appeal was admitted and the operation of the decree was stayed. After notice the appeal was to be heard in due course. For the preparation of the Paper Book the counsel for the appellant was required to deposit initial charges and to submit list of documents. As there was default, the case was listed before the Court on 24.10.2000. The Court passed a preemptory order, as follows:

"Notice under Rule 181 of the Rajasthan Court Rules was exhibited way back on 28.6.99. Despite taking opportunity, list of documents as well as initial charges have not been filed as yet as per office report dated 20-10- 2K. Four weeks time is granted to do the needful, failing which the appeal will stand automatically dismissed without reference to the Court."

The compliance of the order was made on 21st November, 2000 to the extent of depositing initial charges. The list of documents was submitted on 23rd November, 2000. Thus, according to the appellant there was two days delay in filing the documents so as to comply with the pre-emptory order. In view of the pre-emptory order the first appeal stood dismissed. The appellant filed an application under Order 41 Rule 19 C.P.C. for readmission of the appeal dismissed for default. This application has been rejected by the impugned order of the learned Single Judge dated 11.4.2002, which reads as follows :

"According to office report the defects have been removed.

Heard learned counsel for the petitioner.

On perusal of the application, I do not find any sufficient ground to have been made out for restoration of the appeal dismissed for non-compliance of the pre-emptory order.

The restoration application is, therefore, dismissed."

3. At the outset Mr. Vikas Balia, learned counsel appearing for the respondent has raised a preliminary objection as to the maintainability of the special appeal under Section 18 of the Rajasthan High Court Ordinance. It is submitted by the learned counsel that the instant appeal being against the order of the learned Single Judge passed in exercise of appellate jurisdiction the special appeal under Section 18 is not maintainable. The learned counsel has placed reliance on a decision of this Court in *Sohan Lal v. Laxmilal reported in* ¹

4. In order to appreciate the contention it will be convenient to read Section 18 of the High Court Ordinance as follows :

"18. *Appeal to the High Court from judgment of Judges of the Court.* - (1) An appeal shall lie to the High Court from the judgment (not being a judgment passed 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 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 under section 43 or in the exercise of criminal jurisdiction of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the

High Court from a judgment of one Judge of the High Court 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 High Court where the Judge who passed the judgment declares that the case is fit one for appeal."

A bare reading of the provision shows that a special appeal against the judgment of the learned Single Judge passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a court is not maintainable. In other words though a special appeal against the judgment of the learned Single Judge passed in first appeal is maintainable but not in second appeal. Thus, the case in question is clearly distinguishable inasmuch as special appeal in Sohan Lal's case was against the order dismissing restoration application for re-admission of the second appeal. This fact is evidence from the following observation of the Division Bench in the said case :

"The Order, therefore, has been made manifestly in exercise of appellate jurisdiction of this Court in connection with the second appeal in question."

It is pertinent to notice that the Division Bench distinguished the Full Bench decision of the Lahore High Court on the ground that it was a case of first appeal. The Division Bench distinguished the Full Bench Decision of Lahore High Court in *Firm Shaw Hari Dial & Sons v. Messrs Sohna Mal Beli Ram through Arjan Dass*, ² Lahore page 95 as follows:

"The appeal was, therefore, in exercise of appellate jurisdiction of the Court but in connection with an order which was passed by the trial court itself. In other words, it was case of first appeal having been presented against the order of the trial court, which had been dismissed by the Single Judge and in such a case it was held that appeal lay to the Division Bench under Clause (10) of the Letters Patent. The (sic) here is entirely different. Here the order of dismissal was passed in connection with the appellate decree of the court below and the application for the restoration, which has been refused by the order in question now was in connection with that appeal. Therefore, the order against which this appeal has been presented is clearly hit by exception provided under Section 18 of Clause (1) of the Act."

5. The instant appeal arises from the order of dismissal passed in connection with the appellate decree of the Court below i.e. it was passed in first appeal. Thus, the case

cited by the learned counsel for the respondent, rather, supports the appellant to maintain the special appeal. In view of this, the preliminary objection raised by the respondent is rejected.

6. At this stage, we make it clear that Section 100A as inserted by the Amendment Act of 1999 which was recasted and amended by the Amendment Act of 2002 which came into force on 1.7.2002 has no application as the impugned order is prior to 1.7.2002.

7. In the instant case, there appears to be some casualness on the part of the learned counsel for the appellant in not complying with the orders of the Court dated 24.10.2000. Such sort of casualness in the profession deserves to be condemned. The Apex Court in *Re : Sanjiv Datta & Ors.* reported in 1995(3) SCC page 619 dealing with the casualness in the profession has described it as unfortunate for the legal profession and administration of justice. With a view of caution the legal profession, it is desirable to quote Paras 19 and 20 of the said judgment as follows :

"Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings may many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to service the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the Court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.

The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members

by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in his country is no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before its is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

8. However, the Apex Court has also observed in *Rafiq & Anr. v. Munshilal & Anr.* reported in ³ that the party should not be made to suffer for the misdemeanour or inaction of their counsel. The words "sufficient cause" occurring in Order 41 Rule 19 C.P.C. have to be interpreted liberally. In *Sadik Mian & Anr. v. Ram Dhyam Hajam & Ors.* reported in ⁴ the Apex Court expressed its inability to agree with the High Court that no sufficient cause was shown by the appellant for the delay caused in paying the Talbana and making the application for condonation of delay caused in filing an application for restoration of the appeal. The Apex Court held that the High Court ought to have condoned the delay and should have heard the appeal on merit. We are of the view that a little more sensitive approach is required to be adopted by the courts in process of dispensation of justice. It is not at all desirable to drive a party out of court by way of punishment for whatever reason. It will also not be fair to attribute every thing to the lawyers for any sort of fault. There are defects in the system for

which entire legal profession is responsible which include the judges and lawyers both. While the legislature has provided a provision for dismissal of a proceeding for default, it has also provided provision for restoration. It will be travesty of justice if the court fails to exercise the power in restoring the proceedings except in rare and for exceptional reasons. We may remind an age old well established principle that every court has inherent power to act *ex debito justitiae* to do real and substantial justice for which its exists. It has always been anxiety of the court to decide an issue on merit instead of driving out a party from the court for one or the other technical reason. Even if the party was remiss in complying with the directions of the court the appeal could have been restored on payment of cost. Refusal to restore an appeal is bound to result in a meritorious matter being thrown out and the cause of justice will be defeated. The Apex Court in *Collector, Land Acquisition v. Mst. Katiji & Ors. reported in* ⁵ has observed, thus :

"It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical ground but it is capable of removing injustice and is expected to do so."

9. Recently the Apex Court in *Rohit Singhal v. Principal reported in* ⁶ . page 24 dealing with the question of discipline has observed that efforts must be made to salvage the situation in order to secure ends of justice.

10. Thus, from the perspective of justice oriented approach, we are of the view that the order of the learned Single Judge is not sustainable. With all humility at our command and with great respect to the learned Single Judge, we disapprove the approach reflected from the impugned order refusing to restore the first appeal.

11. Consequently, we allow the appeal and set aside the order of the learned Single Judge dated 11.4.2002. The application filed by the appellant under Order 41 Rule 19 C.P.C. is granted. Consequently, the S.B. Civil Regular First Appeal No. 64/1995 dismissed for non-compliance of the pre-emptory order dated 24.10.2000 is restored to its original number on the condition that the appellant shall deposit Rs. 250/- with the Dy. Secretary (Legal Aid), Rajasthan State Legal Service Authority within a period of three months. The first appeal shall be placed before the learned Single Judge for decision on merit. The preparation of the Paper Book is dispensed with, as the matter pertains to Single Bench.

Appeal allowed.

Cases Referred.

1. 1960 R.L.W
2. A.I.R. 1942(29)
3. AIR 1981 SC
4. 1982(3) SCC
5. AIR 1987 SC 1353
6. AIR 2003 SC W