

RAJASTHAN HIGH COURT

UCO Bank

Vs.

Roopa Ram

Civil Special Appeal (Civil) No. 27 of 2003, 75 of 2002 and 85 of 2002
(N.N. Mathur and Sunil Kumar Garg, JJ.)

17.04.2003

JUDGEMENT

Mathur, J.

1. This special appeal is directed against the judgment of the learned Single Judge dated 3-1-2003 (reported in 2003 AIHC 1273) affirming the judgment and decree dated 20-4-1995 passed by the Additional District Judge No. 2, Jodhpur in Civil Original Suit No. 263/1994.

2. Mr. L. R. Mehta, learned counsel appearing for the respondent has raised preliminary objection with respect to the maintainability of the special appeal in view of the prohibition provided by Section 100-A of the Civil Procedure Code as amended by C.P.C. (Amendment) Act, 1999 and C.P.C. (Amendment) Act, 2002 read with Section 32 of the C.P.C. (Amendment) Act, 1999. In view of the importance of the question raised a general notice inviting assistance of the lawyers whosoever desires of throwing light on the aforesaid issue about the maintainability of appeal with respect to the orders passed by the learned Single Judge in exercise of ordinary civil jurisdiction in the matters arising under the Civil Procedure Code before and after 1-7-2002 was given. On the request of the learned counsel for the parties, *D. B. Civil Special Appeal No. 75/2002 M/s. Dataram Ramesh Kumar v. DIG, BSF and D. B. ¹ Ramesh Kumar v. R.S.R.T.C. and others* in which the same controversy is involved, have also been taken up for hearing.

3. A brief resume of relevant facts will help in focusing the attention dealing with the preliminary objection. The fact drawn from *UCD Bank v. Roopa Ram* ² are that respondent plaintiff Roopa Ram filed a suit for ejection against the appellant Bank in respect of the property situated on the High Court Road in the city of Jodhpur on the

ground of reasonable and *bona fide* necessity. The suit was decreed by the judgment dated 20-4-1995 by the Additional District Judge No. 2, Jodhpur. The defendant appellant filed a regular first appeal under Section 96 of the Civil Procedure Code before this Court. The learned Single Judge dismissed the appeal by judgment dated 3-1-2003 affirming the judgment and decree passed by the trial Court. The Bank has filed special appeal under Article 225 of the Constitution of India. It is relevant to mention that special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 is provided against the judgment of the learned Single Judge with certain limitations. The Ordinance, 1949 came to be repealed by Judicial Administration Law (Repeal) Act, 2001. The Full Bench of this Court, in *State of Rajasthan v. R. C. Misra, reported in* ³ held that repeal of High Court Ordinance, 1949 by the Act of 2002 will have no effect whatsoever on the exercise of power of jurisdictional Bench in the matter of hearing of appeals against the judgments of the learned Single Judge as it will continue to exercise such jurisdiction vested by virtue of Article 225 of the Constitution of India and thereafter, under Article 52 of the State Re-Organization Act, 1956. The Court held that the effect of Article 225 was akin to incorporation of such provisions in relation to subject dealt with under it, as were in parent legislature or instrument under which respective High Courts were set up in the first instance before commencement of Constitution or as per the practice or procedure followed by existing High Courts. Thus, Section 18 of the Rajasthan High Court Ordinance, 1949 in spite of repeal survives under Article 225 of the Constitution of India by virtue of incorporation. In *Ram Sarup v. Munshi, reported in* ⁴ the Apex Court held that where provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. Therefore, there should not be any obsession in reading Section 18 of the Rajasthan High Court Ordinance, 1949 simply because it has been repealed by the Judicial Administration Law (Repeal) Act, 2001. Much hounded Section 18 of the Rajasthan High Court Ordinance, 1949 is extracted 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 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 a fit one for appeal."

4. A Division Bench of this Court to which one of us was a party (Hon'ble Mathur, J.) in *Mohanlal v. Lal Chand*, reported in ⁵ held that provisions of Section 18 of the Rajasthan High Court Ordinance, 1949 are *pari materia* with the Clause 15 of the Letters Patent Act, which applies to the Bombay High Court and certain other High Courts. The Court further held that the special appeal is nothing but intra-Court appeal like Letters Patent Appeal. In fact, legislation made, by the Parliament for governing the High Courts since commencement of the Constitution, provided intra-Court appeals under those laws, except to the extent, right to intra- Court appeal in High Courts have been abrogated by the specific provisions. In the Civil Procedure Code, a new provision of Section 100-A under the heading of "No further appeal in certain cases" was substituted by the C.P.C. (Amendment) Act, 1999 which reads as follows:-

"10. Substitution of new Section for Section 100-A:- For Section 100-A of the principal Act, the following Section shall be substituted, namely:-

"100-A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force,-

(a) where any appeal from an original or appellate decree or order is heard and decided,

(b) where any writ, direction or order is issued or made on an application under Article 226 or Article 227 of the Constitution, by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge."

5. There was opposition by the Bar to the certain amendments made under the C.P.C. (Amendment) Act, 1999 which included prohibition of Letters Patent Appeal to the Division Bench against the decision and order rendered by the Single Judge of the

High Court in the proceedings under Articles 226 and 227 of the Constitution of India. Upon reconsideration, the Government accepted the demand and Section 100-A was redrafted withdrawing the prohibition of Letters Patent Appeal to the Division Bench against the judgment of the Single Judge on an application under Article 226 or 227 of the Constitution of India. Thus, for Section 100-A of the Principal Act (as substituted by Section 10 of C. P.C. (Amendment) Act, 1999) following Section was substituted by Section 4 of the C.P.C. (Amendment) Act, 2002 which came into effect from 1-7-2002:-

"4. Substitution of new Section for Section 100-A.- For Section 100-A of the Principal Act (as substituted by Section 10 of the Civil Procedure Code (Amendment) Act, 1999), the following Section shall be substituted, namely:-

100-A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge."

6. Thus, on just and rational understanding in any manner, in any reasonable corner, there could be no doubt of maintain-ability of Letters Patent Appeal against the judgment of the Single Judge on an application under Article 226 or 227 of the Constitution of India. The legislature has made, obvious that it has no intention to abolish Letters Patent Appeal against the order of the learned Single Judge exercising the original writ jurisdiction. It only excluded appeal from original or appellate decree. The crucial question which arises for consideration is whether by introduction of Section 100-A of the Civil Procedure Code, which has come into effect on 1-7-2002, effaces the right of filing such appeals after the said cut off date. In other words, the amendment decimate and nullify the right of such preferring of appeal after the said provision brought on the statute book.

7. It is vehemently argued by Sri D. S. Shishodia and Sri Dinesh Maheshwari, learned counsel for the appellants that right of appeal is vested right which accrues and vests on the date of original institution of suit and continues to be available at every stage till the matter is finally decided from beginning to final decision by final Court. It is submitted that it is the date of institution of suit which would govern all further appeals, whether first appeal, second appeal or intra-Court appeal in the name of

Letters Patent Appeal or special appeal. The learned counsel has placed reliance on the decision of the Apex Court in *Garikapati Veeraya v. N. Subhaiya Choudhary*, reported in ⁶ On the other hand, it is submitted by Shri L. R. Mehta, learned counsel appearing for the respondent that Section 100-A as inserted by the C.P.C. (Amendment) Act, 2002 which came into effect from 1-7- 2002 clearly bars any further appeal to the Division Bench from the judgment of the learned Single Judge passed in appeal from the judgment of the trial Court. The learned counsel has placed reliance on the Full Bench judgment of M. P. High Court in *Laxmi Narain v. Shiv Lal Gujar*, reported in ⁷

8. Before we deal with the rival contentions advanced it may apposite to read Section 16 of the Amending Act which deals with repeal and savings as under :-

"16. Repeal and savings.- (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act, have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897,-

(a) the provisions of Section 102 of the principal Act as substituted by Section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of Section 5, and every such appeal shall be disposed of as if Section 5 had not come into force;

(b) the provisions of Rules 5, 15, 17 and 18 of Order 6 of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Civil Procedure Code (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Civil Procedure Code (Amendment) Act, 1999 and Section 7 of this Act;

(c) the provisions of Rule 1 of Order 20 of the First Schedule as amended by Section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of Section 13 of this Act."

9. It is submitted by the learned counsel that the amended provision of Section 100-A

does not take away vested right of appeal as the provision is not expressly so worded and that there is no clear intention that can be so gathered from the provision. The learned counsel has read the decision of Apex Court in *Garikapati Veeraya v. N. Subhaiya Choudhary* (supra) wherein decision rendered in the case of *Saddar Ali v. Dalimuddin, reported in* ⁸ and *Vasudeo Samiar, In re: reported in AIR 1929 Madras 381* was approved. In the said case, the Constitution Bench has culled out the principles in para 23 which reads as follows:-

"23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date of the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

10. Thus, it clearly emerges that right of appeal is a substantive right. The vested right of appeal can be taken away only by a subsequent enactment, if so provides expressly or by necessary intendment and not otherwise. Thus, while examining the retrospectively, it is advisable to know the object behind introducing of provision in the statute justice Malimath Committee examined the issue of further appeal against the judgment of the Single Judge exercising the first appellate jurisdiction. Committee recommended for suitable amendment of Section 100-A of the Civil Procedure Code with a view to provide that further appeal in this regard shall not lie. The Committee

also recommended for suitable enactment by Parliament for abolition of appeal to Division Bench against the decision and order rendered by the Single Judge of the High Court in a proceeding under Article 226 or 227 of the Constitution of India. However, by Amendment Act of 2002, appeals to Division Bench under Articles 226 and 227 of the Constitution of India have been restored. Section 10 of the C.P.C. (Amendment) Act, 1999 has abolished the appeal against the judgment of Single Judge of the High Court in all cases. The net result of Amendment Acts of 1999 and 2002 is that where an appeal from original or appellate decree where order is heard and decided by Single Judge of the High Court, no further appeal shall lie to Division Bench of High Court. In the amending Act, the words "no further appeal shall lie" is of great significance. It clearly means that no further appeal shall be entertained in respect of appeal filed after the cut off date. Looking to the object of introducing the provision, any other interpretation would be anathema to the provision. Reading the words "heard and decided" and the words "no further appeal shall lie" conjointly, clearly indicates that vested right of appeal has been taken away by the Legislature from the cut off date i.e., 1-7-2002. It is in consonance with the intention of the Legislature to curtail the second appeal in the third Court. The Legislature in its wisdom has considered the right of appeal to a singular one. Thus, the Legislature has expressly stated that no further appeal shall lie after the appeal has been heard and decided against the judgment and decree of original Court. Thus, we are of the view that the substitution of Section 100-A of the Civil Procedure Code does not permit the Division Bench to entertain special appeal against the judgment and decree of the learned Single Judge rendered in first appeal after the cut off date i.e., 1-7-2002.

11. Thus, for the reasons mentioned above, all the three special appeals being *D. B. UCO Bank and another v. Roopa Ram*,⁹ *D. B. M/s. Dataram Ramesh Kumar v. DIG, B.S.F.*¹⁰ and *Ramesh Kumar v. R.S.R.T.C.*¹¹ and others being against the judgment of the learned Single Judge decided after the cut off date i.e., 1-7-2002 are not maintainable and as such each of them stand dismissed.

Appeals dismissed.

Cases Referred.

1. Civil Special Appeal No. 85/2002
2. D. B. Civil Special Appeal No. 27/2003
3. (2003) 1 Raj LW 155
4. AIR 1963 SC 553

5. (2001) 1 WLC 129: (AIR 2001 Raj 87)
6. AIR 1957 SC 540
7. (2003) 1 MPLJ 107: (AIR 2003 MP 49)
8. AIR 1928 Calcutta 640: (1929 (30) Cri LJ 69)
9. Civil Special Appeal (Civil) No. 27/2003
10. Civil Special Appeal (Civil) No. 75/2002
11. D. B. Civil Special Appeal (Civil) No. 85/2002