

# RAJASTHAN HIGH COURT

Kamla

Vs.

Harbhajan Singh

Civil Misc. Appeal No. 119 of 2002

(H.P. Gupta, J.)

08.02.2005

## JUDGEMENT

**H. P. Gupta, J.**

1. It is contended by learned counsel for the appellant, on the authority of the Full Bench Judgment of Madhya Pradesh High Court, in *Jamuna Bai (Smt ) v. Chhote Singh, reported <sup>1</sup>in* and an interim order passed by this Court on 7-4-2004, in *Lalit Kumar Gelara v. M/s. Softtax, <sup>2</sup>* that in view of provisions of Order 41, Rule 14 (4) of the Civil Procedure Code service of unnerved respondents be dispensed with, as they remained absent before the trial Court.

2. I have considered the submission, and find, that the order in Lalit Kumar Gelara's case, simply proceeds on the Judgment in Jamuna Bai's case (2004 (2) AJR 210) (supra), and therefore, I have gone through the Judgment in Jamuna Bai's case, and despite all my earnest efforts, I have not been able to persuade myself to agree with the proposition propounded by Hon'ble MP High Court in Jamuna Bai's case. In para No. 9 thereof, the provisions of Order 41, Rule 14 (4) have been interpreted in the manner, that expression "proceedings incidental to an appeal", shows, that as and when appeal is filed and admitted for hearing, after admission the next incident in the appeal is of issuing notice to respondents. Thus, issuance of notice to respondents will be a "proceeding incidental to an appeal", and it has also been held that effect of dispensing with service is, that the respondent remains a party in the appeal, but service of notice is dispensed with, and it cannot be termed as deleting the name of unserved respondents. On the contrary they continue to remain party in the appeal. Reference was also made to Judgment of Hon'ble Supreme Court in the case of *A. Robert v. United Insurance Company Ltd., <sup>3</sup>* but then, in Jamuna Bai's case itself it

was noticed, that controversy involved in that case was different.

3. For proper appreciation of the legal position, I may gainfully quote the provisions of Order 41, Rule 14 (4) of the Civil Procedure Code, which reads as under:

"Order 41 Rule 14 (4) : Notwithstanding anything to the contrary contained in sub- rule (1), it shall not be necessary to serve notice of any proceedings incidental to an appeal on any respondent other than a person impleaded for the first time in the appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal."

4. It is to be grasped, that the interpretation of any of the provision of Civil Procedure Code cannot be made, with a view to cover the fact situation in a particular case, or to cover the particular nature of cases only. The interpretation of provisions of Order 41, Rule 14 (4) is to be taken so as to be applicable to all appeals, arising out of trial Court Judgments and decrees, and therefore, interpretation when taken, under undue obsessions of sympathies in favour of claimants, would tend to tempt the Court, to make inapt, if not incorrect, interpretation of the provisions.

5. The interpretation taken in Jamuna Bai's case (2004 (2) AJR 210), if carried to logical conclusion, is to have far reaching, and devastating consequence, rather, is bound to result into, plain and simple throttling justice, and is likely to bring about a situation that would be patently violative of principles of natural justice. Day in and day out, this Court has been coming across the cases, including one case, being CMA No. 307/2001, which this Court came across today itself, that notices of claim petition, were never served on the owner and driver, rather in the main claim petition, they were not even issued, and somehow the Tribunal, even without there being any order-sheet to proceed the matter *ex parte* against them, decided the claim petition, observing in the judgment, that nobody appeared on behalf of the driver and owner, and the case was ordered to proceed against them *ex parte*. If that case happened to fall in the lot of cases in hand, applying the principle, as propounded in Jamuna Bai's case (2004 (2) AJR 210), the cases of claims shall be decided altogether without giving any opportunity of hearing whatsoever to them, which is never contemplated by the requirement of principle of natural justice. This is one aspect of the matter. There may be many more situations like, where the claim is decreed, and insurer is held liable, and that the claim proceeded *ex parte* against the driver and owner, and the insurer files an appeal contesting its liability, and is able to successfully contend that it is not liable, and even in such cases, the Supreme Court recently, in *Oriental Insurance Co. Ltd. v. Nanjappan*, reported <sup>5</sup> in and *Pramod Kumar Agrawal v.*

*Mushtari Begum (Smt.) reported* <sup>5</sup>in have held, that direction is to be given by Tribunal in proceeding itself, authorizing the Insurance Company to straightway recover the amount from the owner, by executing the award, and even for making disbursement of amount recovered from insurer, it has been directed to take securities, and make attachment of the property of the owner. In these cases, the insured and/or driver, may very well contest the appeal on the question of liability of insurer, and get the insurer held liable, while if the interpretation in Jamuna Bai's case is followed, even in those cases, the owner and driver will not get any notice of appeal. Thus, they would be simply "condemned unheard" in the appellate Court. Likewise, there may be cases, where claim petition is altogether dismissed by Tribunal against all the defendants, and in appeal claimants succeed in establishing the entitlement of compensation, and at the same time, insurer may be able to establish that it is not liable, in that event again, owner would be held liable, without getting any notice of appeal, according to the interpretation taken in Jamuna Bai's case.

6. To say the least, it is basic requirement of principles of natural justice, on which the whole edifice of judicial system exists, and inspires public faith, which is going to be the very first casualty.

7. Considering the case from yet another stand point i.e. on the bare language of the provision itself also, I have not been able to persuade myself to agree with the interpretation in Jamuna Bai's case, (2004 (2) AJR 210). A look at the provisions of Order 41, Rule 14 (4) as quoted above shows that all that it provides is that "it shall not be necessary to serve notice of any proceedings incidental to an appeal". This clearly means that dispensability of service of notice is only "of any proceedings incidental to an appeal", and does not provide for dispensability of service of "the notice of appeal itself". The very language providing for dispensability of "notice of any proceedings" obviously means and contemplates "some proceedings", obviously to be taken by the Court, and such proceedings may be incidental to an appeal, and which otherwise require notice to be issued to the other party, and does not contemplate to include the ministerial acts to be taken by the office pursuant to the orders of the Court. Since the follow up actions to be taken or the ministerial acts to be done, are not the proceedings of the Court as such, it cannot be said that issuance of the notice is "proceedings incidental to an appeal". Some of the likely instances of proceedings which may be incidental to an appeal, are like proceedings for grant of stay, or injunction, or for additional evidence, or substitution of legal representatives of other respondents, or for early hearing, and so on and so forth, which obviously

require hearing the other party, and in such or like proceedings, the service of notice of such proceedings may be dispensed with, but the language of Order 41 Rule 14 (4) does not include the ministerial acts in the expression "proceedings incidental to an appeal", so as to dispense with the service of the appeal itself on the respondent concerned who did not appear in the trial Court.

8. Even a person suffering an *ex parte* decree may have a right to file cross-objections, to challenge some part of the decree, or some findings, which obviously can be filed within thirty days of the receipt of the summons of the appeal, and on the interpretation as taken in Jamuna Bai's case (2004 (2) AJR 210) he would clearly stand deprived of his this valuable right.

9. In that view of the matter, I m not inclined to follow the view taken in Jamuna Bai's case (2004 (2) AJR 210), and in turn, am also not inclined to dispense with the service of unnerved respondents. The appellants are accordingly directed to take necessary steps for getting the service of unnerved respondent affected.

Order accordingly.

Cases Referred.

1. 2004 (2) AJR 210
2. SBCMA No. 353/97
3. (AIR 1999 SC 2977)
4. 2004 (2) Acc CJ, 721 : ( AIR 2004 SC 1630)
5. (2004) 8 SCC, 667 : ( AIR 2004 SC 4360)