

NAGPUR HIGH COURT

Kishanlal Nandlal

Vs

Vithal Nagayya

Misc. Civil Case No. 10 of 1955

(Hidayatullah, C.J. and Kotwal, J.)

04.01.1956

ORDER

Hidayatullah, C.J.

1. This is a petition under Article 133 of the Constitution read with Sections 109 and 110, Civil Procedure Code for leave to appeal to the Supreme Court. With this petition there are three other petitions, which bear numbers 8, 9 and 11 all of 1955. All these petitions are made in respect of judgments of this Court delivered in Letters Patent Appeals Nos. 22 to 25, all of 1950. By these judgments a Division Bench reversed the judgments of Mudholkar, J. given in the respective second appeals. Mudholkar, J., in his turn, had reversed the judgments of the District Judge.

2. There is also an application for consolidation of these appeals under Order 45, Rule 4, Civil Procedure Code. It is contended that the judgments of the trial Court as well as those of the subsequent Courts were delivered in one suit since substantially common points of law arose in them and were adopted in the other suits. The non-applicants contend that these appeals cannot be consolidated under Rule 4 of O. 45 of the Code. Shri Dabir, who appears for all the non-applicants in the several petitions, admits that the point of law involved was not only substantially the same but also common. He, however, contends that they were decided by separate judgments and therefore the cases are governed by the latter part of the said rule. He opposed the consolidation on this ground and the ground that no reasons had been given why the discretion should be exercised in favour of the petitioner.

3. Many authorities were cited before us. In this Court, in connexion with consolidation of suits, it was laid down by a Division Bench in *Manohar v. Laxman*¹ that if

"two suits having a common issue are, by consent of parties or by order of the Court, tried together and decided on one finding there is in substance one

judgment and one decree, though in form the Court may have written two judgments." The Division Bench's decision was also followed in *Hemrajsingh v. Umadevi*²

The question really is what is meant by the words 'same judgment'. It is a question regarding the interpretation of the language used and, to borrow Lord Ellenborough's expression in *Fenny v. Ewestace*³, is one for a grammarian rather than a lawyer, or which a school master might decide as I well as a Judge'. Though cases are to be found 'in the commentaries supporting the opposite contention, the trend of opinion now seems to be that if the judgments are substantially the same consolidation can be ordered. In our opinion, this latter trend is in consonance with the grammatical meaning of the rule. The rule reads as follows :

'For purposes of pecuniary valuation, suits involving substantially the same questions for determining and decided by the same judgment may be consolidated; but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.'

4. To understand the rule one must expand the expression 'judgment' and induct into the rule the definition thereof in the Code of Civil Procedure. 'same judgment' then reads :

'same statement given by the Judge of the grounds of a decree or order.' The expression 'separate judgments' in the latter part of the rule, when similarly expanded, reads :

'separate statements given by the Judge of the grounds of decree or orders.'

When a Judge writes a single statement of the grounds and makes those grounds applicable to different decrees, it is, in our opinion, the 'same judgment' for the purposes of Rule 4 of Order 45 of the Code. The word 'same' does not always mean 'identical' only. In the present cases, however, the statement of reasons is identical, and there is more reason to hold that the suits and appeals are governed by the 'same judgment', though for a matter of form a skeleton judgment incorporating the main judgment by reference is also separately delivered in each case. Since the grounds for the decree or order are the same, the existence of these skeleton separate judgments for completion of the record of the various suits cannot bring the matter within the latter part of the said rule and it still falls to be determined under the first part. In the rule the judgment which really decides the matter is meant and not any supplementary or formal judgment based on the other and made to complete the record. The emphasis in the rule is not on different cases or suits but on different judgments, that is to say, the statement of the reasons for the decision. In our opinion, therefore, these cases can be consolidated under Rule 4.

5. The question is whether we should do so. The position is as follows : None of the suits involved a claim above the mark, but the claims in the four suits added together do take the consolidated pecuniary value above it. The point involved is important, because it deals with the

control of forward transactions and the right of suit. In our opinion, the discretion which is given to the Court under Rule 4 should, in the circumstances of the cases and in view of their general importance - apart from the importance to the parties - be exercised in favour of consolidation. It may be pointed out that in the two Courts below, as well as before the learned Single Judge, all suits and appeals were heard together and were disposed of by a common judgment.

6. The learned counsel for the non-applicants contends : Why should four different persons have to join a single appeal? But that, in our opinion, is inevitable and rather than being a hardship is distinctly an advantage. It is no reason for not consolidating the appeals which the law allows us to consolidate. For the reasons we have given we do not think that any question of inconvenience or hardship arises.

7. This, however, is not the end of the matter. The learned counsel for the non-applicants contends that inasmuch as the decision of the Division Bench restored that of the District Judge the decision under the proposed appeal is one of affirmance. According to him, the learned Single Judge is not a Court 'immediately below the Division Bench' and that an appeal within the High Court under Clause 10, Letters Patent cannot be said to be taken from a Court immediately below within Section 110, Civil Procedure Code. He relies upon *Sk. Wahid-ud-din v. Makhan Lal*⁴, and *Debendra Nath Das v. Bibudhendra Mansingh*⁵ In the former the decision of the Full Bench was not unanimous, Blacker, J. having dissented. The Full Bench there reversed the earlier decision reported in *Gopal Lal v. Bal Kisen*⁶, which is relied upon by the petitioner. In the second case a Division Bench of the Calcutta High Court, consisting of Sir Lawrence Jenkins and Chatterjea, J. laid down the proposition which is followed by the Lahore High Court. In the Lahore High Court the earlier view was that the decision of a Single Judge of the High Court must, for the purpose of section 110 of the Code, be treated as that of a Court immediately below the Division Court. Sir Shadi Lal, C.J. and Broadway, J. in *Gopal Lal v. Bal Kishen (cit. sup.)*, and the same Chief Justice sitting with Zafar Ali, J. in *Minna Heatherly v. B.C. Sen*⁷, laid down this clear proposition. Indeed, in the second case, Shadi Lal, C.J. described it as the accepted opinion of that Court.

8. In our opinion, in view of the fact that in *Tulsi Persad Bhakt v. Benayek Missar*⁸, Lord Davey described a single Judge deciding a case on the original side as a Court distinct from the Appellate Division of the same Court hearing the appeal against his judgment, and in view of the fact that the appeal was held to be untenable, being one against an affirming judgment, the same view must be taken of an appeal against an appellate judgment of a Single Judge. Blacker, J., in the Full Bench case of the Lahore High Court, has explained why he accepted the opposite conclusion and the earlier decisions of the Lahore High Court. We are aware that authority on the other side is great, but the authority of Sir Shadi Lal, C.J. is no less. Having considered the matter very carefully we think that for the purpose of Section 110, Civil Procedure Code the decision of the Single Judge must be treated as that of a 'Court below', because by his leave the Single Judge

creates a superior tribunal for reconsidering his own decision, to the extent of reversing it. The decision in the present cases, therefore, must be treated as one reversing the decision of the Single Judge, that is, of the Court immediately below the High Court. Under the Letters Patent a Division Bench represents the High Court, and the decision of the Division Bench must be treated as that of the High Court, while that of the Single Judge is still subject to an appeal to the High Court itself.

9. For these reasons we accept, with respect, the decisions in the earlier Lahore cases, and equally respectfully dissent from the view taken in the Lahore Full Bench case as also in AIR 1916 Calcutta 973.

10. Having consolidated these appeals, so that the pecuniary value is above the mark, and in view of our upholding the contention that the judgment under the proposed appeals is not one of affirmance, we grant leave to appeal to the Supreme Court. Costs of this matter shall be borne by the non-applicants Counsel's fee Rs. 50/- only one counsel's fee shall be allowed in all the cases if certified.

Leave granted.

Cases Referred.

¹ ILR (1947) Nag 691 : AIR 1947 Nag 248

² P. A. No. 34 of 1939 D/-16-9-1954 (Nag)

³(1815) 4' M and S 58

⁴ AIR 1944 Lah 458 (FB)

⁵43 Cal 90

⁶13 Lah 338 : (AIR 1932 Lah 12)

⁷ AIR 1928 Lah 537

⁸23 Cal 918 (PC)