

# PEPSU HIGH COURT

Ganpat Rai Hira Lal

Vs

Aggarwal Chamber of Commerce Ltd

Appeals Nos. 493 and 494 of 2005

(Teja Singh, C.J. and Chopra, J.)

13.09.1950

## JUDGMENT

### **Teja Singh, C.J.**

1. These are two connected appeals (C. A. No. 493 of 2005 and c. A. No. 494 of 2005) arising out of the judgment of Kartar Singh Cambellpuri J., whereby (i) he rejected the application of the firm Ganpat Rai Hira Lal that their name be removed from the list of contributories settled by the liquidation Judge, and (ii) he made the said firm liable to pay to the Official Liquidator of the Aggarwal Chamber of Commerce Ltd., Narnaul, the sum of Rs. 8,191-0-9 as a contributory. Mr. Gurbachan Singh, counsel for the Official Liquidator of the Aggarwal Chamber of Commerce has raised a preliminary objection that the appeals are not competent. He argues that according to Section 52 of the Patiala and East Punjab States Union Judicature Ordinance, 2005, the appeal from the judgment, decree or order of a single Judge of this High Court can lie to a Bench of two Judges only if the Judge whose judgment, decree or order is appealed from certified that the case is a fit one for appeal; but in the present case the appellant's application for such a certificate was dismissed. Mr. Ram Niwas, counsel for the appellant firm, controverts the objection raised by the opposing counsel. He maintains that so far as the right of and the procedure relating to appeal is concerned the case is governed by Patiala Judicature Firman of 1999 which was in force at the time the proceeding before the liquidation Judge started and not by the Judicature Ordinance of 2005 which was promulgated later. He further maintains that in view of the fact that it is laid down in Section 44 of the said Firman that a certificate by a single Judge would be required only when the order appealed from is made in exercise of civil appellate jurisdiction in respect of a judgment, decree or order made by a Court subject to the superintendence of the High Court and not when it relates to a matter decided by the Judge in exercise of its original civil jurisdiction, want of a certificate cannot take away his right to appeal because the order appealed from was made by the single Judge in exercise of original civil jurisdiction. In support of his contention Mr. Ram Niwas has referred us to two leading cases on the point, *Sadar Ali v. Dolliludin Ustagar*<sup>1</sup>, a decision by a Special Bench of the Calcutta High Court and *Kavasji Pestonji v. Rustomji Sorabji*<sup>2</sup>, In the first case the question was whether the right of a litigant to appeal from the decision of a single Judge of the High Court to a Division Bench of the High Court was governed by the Letters Patent of the Court than existed at

the time the matter was put in the Court or it was affected by the amendment of the Letters Patent that came to be made during the pendency of the proceedings in the High Court. As the Letters Patent stood originally an appeal from a decision of a single Bench lay to the Division Bench as matter of right but the amendment of clause 15 of the Letters Patent, restricted such right to cases which were certified by the single Judge as fit for appeal. The Bench held that the amendment could not apply to a case which was instituted before it was made. Rankin C. J. who wrote the judgment of the Bench, with which his learned colleagues agreed, after referring to a judgment of the Judicial Committee in *Colonial Sugar Refining Co. Ltd. v. Irving*<sup>3</sup>, remarked that the reasoning of the Judicial Committee was a conclusive authority to show that the rights of appeal are not matters of procedure, and that the right to enter the superior Court is deemed to arise to a litigant before any decision has been given by the inferior Court and consequently the amendment of clause 15 which came into existence during the pendency of the case could not be given effect to. Practically the same view was taken by the Bombay High Court in the other Case. While it held that no litigant has any right to have his litigation decided by any particular procedure, and all procedural laws are retrospective in their character and effect even suits filed prior to the passing of such legislation, it added that a right of appeal which a suitor has in a pending action is not merely a matter of procedure and further that it is a vested right and the Legislature cannot take it away retrospectively unless it does so by express words or necessary intendment. I have no quarrel with this view and I agree that ordinarily the right of appeal from an order made in a case should be determined by the law that existed at the time the case was started and not by the law that exists at the time the order from which an appeal is sought to be preferred is made, but as was held by the Bombay High Court the Legislature can take away the right of appeal or modify it by amending the law expressly or by making a provision from which such an intention can be inferred. Now Section 116, Judicature' Ordinance of 2005, contains a provision regarding the proceedings pending at the time the Union was formed. The section reads as follows:

"Notwithstanding anything contained in this Ordinance, all suits, appeals, revisions, applications, reviews, executions and other proceedings, or any of them whether civil or criminal, pending in the Courts and before judicial authorities in any Covenanting State shall be continued and concluded respectively in Courts or before judicial authorities of the like status in the Union; and the Courts or authorities in the Union shall have the same jurisdiction in respect of all such suits, appeals, revisions, reviews, executions, applications and other proceedings, or any of them, as if the same had been duly commenced and continued in such Courts or before such authorities."

The concluding words of the section appear to me to be very important and in my opinion they leave no manner of doubt that the intention of the framers of the Ordinance was that all questions, including those of appeals and right to prefer an appeal, should be determined by the provisions of the Ordinance and not according to the provisions of law that existed at the time the suits, appeals, etc. were commenced, either in the original Courts or in any of the Courts of appeal. I particularly emphasise the words "as if the same had been duly commenced and continued in such Courts or before such authority." Obviously what they mean is that notwithstanding the fact that the suit, or the appeal or the application as the case may be, was originally instituted in a different Court for purposes of

jurisdiction they shall be deemed to have commenced in the corresponding Courts of the Union. In other words, if an appeal was first instituted in the High Court of one of the erstwhile States by virtue of Section 116 it should be deemed to have been commenced in the High Court of the Union and this being the case the procedure regarding the appeal from an order of a single Judge and the right of appeal therefrom will be governed by what is contained in the said Ordinance. As I read Section 116, it appears to me, to be an express provision bearing on the point. In any case, it affects the ordinary rule of appeal by necessary intendment.

2. For all these reasons my opinion is that the appeals are not competent and must, therefore, be dismissed. In view of the difficult nature of the question involved I would leave the parties to bear their own costs.

**Chopra, J.**

3. I agree.

Appeals dismissed.

Cases Referred.

<sup>1</sup>56 Cal. 512: (a. i. r (15) 1928 Cal. 640 F.B)

<sup>2</sup>A. I. r. (36) 1949 Bom. 42 : (50 Ram. L. r. 450)

<sup>3</sup>(1905) a. c. 369 : (74 I. J. P. C. 77)