

Tarapore & Co vs M/S. V/O Tractors Export, Moscow & Anr on 15 November, 1968

Equivalent citations: 1970 AIR 1168, 1969 SCR (2) 699, AIR 1970 SUPREME COURT 1168, 1969 2 SCR 699 1970 (1) SCJ 514, 1970 (1) SCJ 514

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, G.K. Mitter, K.S. Hegde, A.N. Grover

PETITIONER:
TARAPORE & CO.

Vs.

RESPONDENT:
M/S. V/O TRACTORS EXPORT, MOSCOW & ANR.

DATE OF JUDGMENT:
15/11/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
MITTER, G.K.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1970 AIR 1168 1969 SCR (2) 699
1969 SCC (1) 233
CITATOR INFO :
R 1971 SC2337 (6)
R 1972 SC1598 (12)

ACT:
Constitution of India, Art. 133-- Interim injunction
granted In suit whether a 'final order' for purpose of
Article.

HEADNOTE:
M/s Tarapore & Co. who were plaintiffs in a suit
applied for an interim injunction restraining the first
defendant in the suit from taking any steps in pursuance of

a letter of credit opened in favour of the second defendant. A single judge of the High Court granted an interim injunction restraining encashment of the letters of credit pending disposal of the suit. In appeals under the Letters Patent preferred by the second dependent, the High Court of Madras set aside that order. Against the orders passed in the two appeals, the plaintiffs applied for certificate under Arts. 133(1) (a) and 133(1)(b) of the Constitution. The High Court observed that an order granting interim injunction "is a final order, as far as this Court is concerned, determining the rights of parties within this his or proceeding, which is independent though ancillary to the suit", and they were competent to grant certificate. In this Court the defendants applied for revocation of the certificate.

HELD: The certificate must be revoked.

An order passed by the, High Court in appeal which does not finally dispose of a suit or proceeding and leaves the rights and obligations of the parties for determination in the suit or proceeding from which the appeal has arisen, is not final within the meaning of Art. 133(1)(a) and (h). The order refusing to grant an interim injunction did not determine the rights and obligations of the parties in relation to the matter in dispute in the suit. It could not be held that because the plaintiffs suit as a result of the order of the High Court may become infructuous as framed and the plaintiff may have to amend his plaint to obtain effective relief an order which is essentially an interlocutory order may be deemed final for the purpose of Art. 133(1) of the Constitution. [704 H]

Mohanlal Maganlal Thakkar's case makes no departure from the earlier judgments of the judicial Committee, the Federal Court and this Court.

Ramchand Manjimal v. Goverdhandas Vishindas Ratanchand, L.R. 47 I.A. 124; Salaman v. Warner, [1891] 1 Q.B. 734; Bazson v. Altrincham Urban District Council, [1903] 1 K.B. 547; Isaacs v. Selbstein, [1916] 2 K.B. 139, Abdul Rahrnan v.D.K. Cassim & Sons, L.R. 60 I.A. 76; S. Kuppusami Rao v. The King, [1947] F.C.R. 180; Mohammad Amin Brothers Ltd, and Others v. Dominion of India and Others, [1949-50] F.C.R. 842; Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, [1958] S.C.R. 1007; Srinivasa Prasad Singh v. Kesho Prasad Singh 13 C.L.J. 681 and Druva Coal Company v. Benaras Bank, 21 Cal. L.J. 281, referred to.

Mohanlal Maganlal Thakkar v. State of Gujarat. A.I.R. 1968 S.C. 733, explained.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Misc. Petitions Nos. 401/and 4012 of 1968.

Applications by respondent no. 1 for revocation of the certificate granted by the Madras High Court on 15th October, 1968 under Art. 133(1)(a) & (b) of the Constitution of India.

AND Civil Appeals Nos. 2183 and 2184 of 1968.

Appeals from the judgment and order elated October 9, 1968 of the Madras High Court in O.S.A. No. 25 and 27 of 1968.

M.C. Setalvad. V.P. Raman, D.N. Mishra, and J.B. Dadachanji, for the appellant.

S. Mohan Kumaramangalam. M.K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for respondent No. 1.

Rameshwar Nath and Mahinder Narain, for respondent No. 2. The Judgment of the Court was delivered by Shah, J. M/s. Tarapore & Company--hereinafter called the plaintiffs--applied in Suit No. 118 of 1967 for an interim injunction restraining the Bank of India Ltd.--the first defendant in the suit from taking any steps in pursuance of a letter of credit opened in favour of M/s. V/O Tractors Export, Moscow, the second defendant. Ramamurthi, J., by order dated April 12, 1968, granted an interim injunction restraining encashment of the letters of credit pending disposal of the suit. In appeals under the Letters Patent preferred by the second defendant,. the High Court of Madras set aside that order. Against the orders passed in the two appeals, the plaintiffs applied for certificate under Arts.133(1)(a) and 133(1)(b) of the Constitution. The High Court observed that an order granting interim injunction "is a final order, as far as this Court is concerned, determining the rights of parties within this lit or proceeding, which is independent though ancillary to the suit", and they were competent to grant the certificate. By our order dated October 28, 1968, we ordered that the certificate granted by the High Court do stand revoked. We set out the reasons in support of that order. Article 133 (1) provides, insofar as it is material:

"(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-

(a) that the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or "(c) where the judgment, decree or final order appealed from affirms the decision of the Court immediately below in any case other than a case referred to in sub-

clause (c), if the High Court further certifies that the appeal involves some substantial question of law."

The suit filed by the plaintiffs is a civil proceeding, and the suit involves some claim or question respecting property of not less than twenty thousand rupees. That is a matter not in dispute.

The expression "judgment" in Art. 133 (1) in the context in which it occurs means a final adjudication by the Court of the rights of the parties, 'and that an interlocutory judgment even if it decides an issue or issues without finally determining the rights and liabilities of the parties is not a judgment, however cardinal the issue may be. In the present case not even an issue has been decided, and it is not contended that the order of the High Court amounts to a judgment or 'a decree. The expression "final order" it has been held by a long course of authorities, occurring in s. 205 of the Government of India Act, 1935, s. 109 of the Code of Civil Procedure and Art. 133(1) of the Constitution means a final decision on the rights of the parties in dispute in a suit or proceeding; if the rights of the parties in dispute in the suit or proceeding remain to be tried, after the order, the order is not final.

In Ramchand Manjimal v. Goverdhandas Vishindas RatanChand(1), it was held by the Judicial Committee that an order of the Judicial Commissioner of Sind vacating an order of stay granted under s. 19 of the Indian Arbitration Act, 1899, and refusing to stay a proceeding was not a final order within the meaning of s. 109(a) of the Code of Civil Procedure. Viscount Cave referred to Salaman v. Warner(2); Bozson Altrincham Urban District Council(a) and Issacs v. Salbstein(4) and observed:

"The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way."

In Abdul Rahman v.D.K. Cassim & Sons(5) the Judicial Committee observed that the expression "final order" within the meaning of s. 109(a) of the Code of Civil Procedure, 1908, is an (1) L.R. 47 I.A. 124.

(2) [1891] 1 Q.B. 734.

(3) [1903] 1 K.B. 547.

(4) [1916] 2 K.B. 139.

(5) L.R. 60 I.A. 76.

Sup. C.I./69--12 order which finally disposes of the rights of the parties in relation to the whole suit. In Abdul Rahman's case(1) a suit was instituted by D.K. Cassim and Sons claiming damages against the appellant Abdul Rahman. Soon after the suit was instituted the plaintiff firm was adjudicated insolvent and the official assignee was impleaded as an additional plaintiff. The official assignee declined to proceed with the suit, and the suit was dismissed by the trial court. In appeal it was held by the High Court of Calcutta that the cause of action was personal to the insolvents and did not vest in the assignee, and accordingly they set aside the decree and remanded the suit for trial. Against

that order an appeal was preferred to the Judicial Committee which was held not maintainable.

In 8. Kuppasami Rao v. The King⁽²⁾ The Federal Court held that the expression "final order" in s. 205 (1) of the Government of India Act, 1935, means an order which finally determines the points in dispute and brings the case to an end. The test of finality, according to the court, is whether the order finally disposes of the rights of the parties, and not whether the order decides an important point or even a vital issue in the case.

Mukherjea, J., in interpreting the expression "judgment, decree or final order" in s. 205 of the Government of India Act, 1935, in Mohammad Amin Brothers Ltd. and others v. Dominion India and others (3) observed:

"The expression "final order" has been used in contradistinction to what is known as "interlocutory order" If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one, but if the suit is still left alive and has got to be tried in the ordinary way, no finality could attach to the order."

In Mohammad Amin Brothers' case⁽³⁾ an issue was decided by the trial court in a petition for winding up of a Company as to the maintainability of a claim for recovery of income-tax dues. In appeal the High Court overruled the objection raised by the Company about the maintainability of the claim, and finding that a bona fide dispute was pending before the Income-tax authorities relating to a substantial part of the debt on which the application for winding up was made and that the solvency of the Company could not be determined before that dispute was decided, set aside the order of the Trial Judge and remanded the case to him. The Federal Court held that the order appealed against was not a "final order".

In Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay⁽⁴⁾ a suit was filed for a declaration that the order of ex-

(1) L.R. 60LA. 76 (2) [1947] F.C.R. 180.

(3) [1949-502] F.C.R. 842.

(4) [1958] S.C.R. 1007.

communication passed by the appellant--religious head of a community--was invalid. During the pendency of the suit them Bombay Prevention of Ex-communication Act 42 of 1949 was enacted and one of the issues raised in the suit was whether the order of ex-communication was invalid. This issue was tried as a preliminary issue and as it raised the question of the vires of the Bombay prevention 'of Ex- communication Act, 1949, the State of Bombay was impleaded as a party-defendant in the suit. The trial court decided the issue against the appellant and the order was confirmed in appeal by the High Court of Bombay. Against the order deciding the issue, an appeal was preferred to this Court with certificate granted by the High Court under Art. 132 and Art. 133 of the Constitution, and it was held that the appeal was not maintainable since the decision on the

issue did not finally dispose of the dispute between the parties. In *Srinivasa Prasad Singh v. Kesho Prasad Singh*(1) an order deciding that circumstances had not been established such as would justify an order for stay of execution of a decree under appeal was not a 'final order' and was on that account not appealable to the judicial Committee. Similarly in *Druva Coal Company v. Benaras Bank*(2) it was held that an order by the High Court reversing the order of the Court of First Instance granting a temporary injunction was not a final order within the meaning of s. 109 of the Code of Civil Procedure.

There is, therefore, 'abundant authority in support of the view that an order is final within the meaning of Art. 133 of the Constitution, under s. 109 Code of Civil Procedure or s. 205 of the Government of India Act, 1935, if it amounts to final decision on the rights of the parties in dispute in the suit or proceeding; if after the order is made, the suit or proceeding still remains to be tried, and the rights in disputes have to be determined, the order is interlocutory.

Counsel for the appellant strongly relied upon a recent judgment of this Court in *Mohanlal Maganlal Thakkar v. State of Gujarat*(3) and contended that the view expressed in the earlier cases is superseded. In *Mohanlal Thakkar's* case(a) after an enquiry under s. 476 Code of Criminal Procedure, 1898, a Magistrate ordered that a complaint be filed against a person in respect of offences under ss. 205, 467 and 468 read with s. 114 I.P. Code. In appeal the Additional Sessions Judge held that the complaint was competent only in respect of the offence under s. 205 read with s. 114. The High Court dismissed a revision application against the order of the Court of Session. Certificate was there-

(1) 13 C.L.J. 681.

(2) 21 Cal. L.J. 281. (3) A.I.R. 1968 S.C. 733.

after issued by the High Court under Art. 134(1)(c) of the Constitution for leave to appeal against the order. The competence of the High Court to grant the certificate was challenged at the hearing of the appeal. This Court held (*Bachawat & Mitter JJ.*, dissenting) that the order passed was a final order within the meaning of Art. 134(1) (c) since the controversy between the parties when the complaint in respect of offences under ss. 467 and 468 read with s. 114 I.P. Code was disposed of by the order of dismissal and the proceeding regarding that question was finally decided. It was observed that the finality of that order was not to be judged by co-relating it with the controversy in the complaint, viz., when then the appellant had committed the offence charged, against him therein. There is nothing in that judgment which supports the contention that this Court has departed from the principle of the earlier decisions or has suggested a different test for determining the finality of orders. The Court in that case was concerned merely with an order passed by the High Court which maintained the order of the Additional Sessions Judge that a complaint under s. 205 read with s. 114 I.P. Code could be filed against the appellant. The order of the High Court finally disposed of the proceeding in the Magistrate's court relating to the expediency of instituting criminal proceedings against the appellant. It was thereafter for the court trying the complaint to decide whether the offence complained of was committed by the appellant. The proceeding for filing a complaint under s. 476 of the Code of Criminal Procedure was a self-contained proceeding and

was finally disposed of by the order directing the filing of a complain under s. 205 read with s. 114 I.P. Code. The proceeding instituted on the complaint was not part of or incidental to the proceeding for an enquiry whether a complaint should be filed. The Court in that case expressly approved of the earlier view at p. 736 where after referring to Kuppusami Rao's case⁽¹⁾ observed:

Syedna Taher Saifuddin Saheb's case⁽²⁾ observed:

" these were cases where the impugned orders were passed in appeals or revisions and since an appeal or a revision in continuation of the original suit or proceeding the test applied was whether the order disposed of the original suit or proceeding. If it did not, and the suit or proceeding was a live one, yet to be tried, the order was held not to be final. Different tests have been applied, however, to orders made in proceeding independent of the original or the main proceeding."

In our judgment an order passed by the High Court in appeal which does not finally dispose of a suit or proceeding and leave the rights and obligations of the parties for determination in the suit or proceeding from which appeal has arisen, is not final within (1) [1947] F.C.R. 180. (2) E[1958] S.C.R. 1007.

he meaning of Art. 133(1)(a) and (b). The order refusing to grant an interim injunction did not determine the rights and obligations of the parties in relation to the matter in dispute in the suit. We are unable to hold that, because the plaintiff's suit as a result of the order of the High Court may become infructuous as framed and the plaintiffs may have to seek amendment of the plaint to get effective relief, an order which is essentially an interlocutory order may be deemed final for the purposes of Art. 133 (1) of the Constitution. In our judgment, Mohanlal Maganlal Thakkar's case⁽¹⁾ makes no departure from the earlier judgments of the Judicial Committee, the Federal Court and this Court. The plaintiffs will pay the costs of the petitioners of the application for revocation of the certificate.

G.C.
revoked.
(1) A.I.R. 1968 S.C. 733.

Certificate