

## **Ram Sarup Pathak And Ors. vs Mahadev Pathak And Ors. on 2 March, 1951**

**Equivalent citations: AIR1951ALL234, AIR 1951 ALLAHABAD 234**

### **JUDGMENT**

Malik, C.J.

1. This case came up before a Bench on 22-9-1950, and it was then referred to a larger Bench in view of the fact that a larger number of similar applications were pending in this Court. The Banaras State was merged under the Merger Agreement dated 5-9-1949, with effect from 15-10-1949. The judicial administration was, however, carried on as before under the Banaras State (Administration) Order, 1949, till 30 11-1949, when the P. C. and the Chief Court were abolished with effect from 1-12-1949, under the Banaras State (Abolition of Privy Council and Chief Court) Order, 1949. On 30 11-1949, there were a number of cases pending in the Chief Court and some cases pending before the P. C. of the Banaras State. Some provision had to be made for the same and in the Order. (The Banaras State (Abolition of Privy Council and Chief Court) Order, 1949), Rules 3, 4 & 5 were enacted to provide for such cases. These rules are as follows :

### **"3. Abolition of P. C. and the existing Chief Court and its consequences.--**

(1) As from the close of the appointed day the P. C. and the existing Chief Court shall stand and are hereby abolished, [2] Any application for leave to appeal including an application for special leave to appeal, to the P. C. pending before the existing Chief Court or the P. C. at the close of the appointed day shall by virtue of this Order, abate at the close of the said day.

(3) All appeals and proceedings, civil and criminal, pending in the P. C. or the existing Chief Court at the close of the appointed day shall stand removed to the H. C. established for the United Provinces which shall have jurisdiction to hear and decide the same.

### **4. Connected proceedings to be taken in the High Court for the United Provinces.--**

Where the existing Chief Court or the P. C. has by reason of its abolition under this order ceased to have jurisdiction with respect to any appeal or proceeding, any proceeding (except a proceeding of the nature referred to in sub para. (2) of para. 3) relating to that appeal or proceeding which, if that Ct. had not ceased to have jurisdiction, might have been had therein, may be had before the H. C. established for the United Provinces, which shall have jurisdiction to hear & decide the same.

5. Appeals, etc., to lie to the H. C. for the United Provinces. --

Any appeal or other proceeding (except a proceeding of the nature referred to in sub-para. (2) of para. 3) which, if instituted or commenced on the appointed day would have lain to the existing Chief Ct. shall unless a different provision is made or is applicable thereto under the law for the time being in force, lie to the H. C. established for the United Provinces."

2. It would appear from the above that provisions were made in Rule 5 for appeals etc., which could have been filed in the Chief Ct. on the 'appointed day' if that Ct. had not been abolished, & the provision was that such appeals etc., would lie to this Ct. Rule 3 may be divided into two parts. Rule 3 (3) lays down that all appeals & 'proceedings, civil & criminal, whether pending before the P. C. or before the Chief Ct. stood transferred to this Ct. Sub-rule (2) of Rule 3, however, provided that all applns. for leave to appeal pending in the Chief Ct. or all applns. for special leave to appeal pending in the P. C. were to abate. No provision seems to have been made for cases where the Chief Ct. had decided the appeal but no appln. for leave to appeal had been filed, or for cases where the appln. for leave to appeal had been made & had been granted, but no appeal had been lodged in accordance with the rules Framed by His Highness the Maharaja of Banaras Rule 4 appears to us to be redundant. All that it provides is that in the appeals & the proceedings pending before the P. C. or the Chief Ct. after the appointed day all proceedings that could be taken in that Ct. could now be taken in the H. C. When the appeals & proceedings stood transferred to this Ct. under Rule 3 (3) this Ct. was seized of those cases & all misc. orders thereafter could be passed by this Ct. & there was, therefore, no necessity to have Rule 4. From a careful study of Rule 4 it appears that it only relates to cases which were pending or proceedings which were pending on the appointed day before the Chief Ct. or the P. C. It does not give any right of appeal to this Court, from a final decision either of the Chief Ct. or of the P. C. of the Banaras State. The word 'proceedings' in Rules 3, 4 & 5 must be interpreted, as has been clearly mentioned in Rules 4 & 5, as proceedings other than proceedings for leave to appeal or special leave to appeal. The idea, therefore, appears to have been that all pending matters were to be transferred to this Ct. except pending applns. for leave to appeal. But all final decisions of the Chief Ct. or of the P. C. of the Banaras State were to become final & this Ct. was not given power to hear & decide appeals or applns. for review etc., against those decisions.

3. In this case a bench of the Banaras State Chief Ct. consisting of the Chief Judge Mr. Vishwanath Prasad & S.B. Malik J.) decided a First Appeal against a decree of the Dist. J. of Bhadohi. The decision is dated 18-8-1949, There was an appln. filed for leave to appeal to the P. C. of the Banaras State & on 23-11-1949, the same Bench granted the appln. Under Notfn. No. 6875/II-34 (1940-41), dated 26/27-9-1941, appeals lay in civil cases, subject to the rules, to His Highness the Maharaja Bahadur, & the procedure for filing appeals & revns. is a part of the same notfn. Clause 6 of the notfn laying down the procedure is as follows:

"Where the certificate is granted, the appct. shall within ninety days from the date of the decree or order complained of whichever is the later date file with the Registrar of the Chief Ct. a memo, of appeal duly signed & stamped with ad valorem C. F. & accompanied by a copy of the decree appealed from & of the judgment on which it is founded or where no decree has been prepared by a copy of the judgment or order

complained of & also by copies of the judgments of the Cts. below. The appct. shall at the same time also furnish security of Rs. 100 in cash or in Govt. securities for the cost of the opposite party unless in any special case he is required to furnish further security & also deposit such sum as he may be required to do as cost of translation typing etc. Provided that the Chief Ct. at the time of granting the certificate may after hearing any opposite party who appears, order on the ground of special hardship that some other form of security may be furnished."

4. As we have already said, certificate was granted on 23-11-1949, & the appct. had one month within which to file the memo, of appeal duly signed & stamped & to deposit security money of Rs. 100. Before, however, he could do either the Ct. was abolished on 1-12-1949, & within thirty days of the order granting leave an appln. was filed in t his Ct. on 20-12-1949, for leave to appeal to the F. C. The memo, of appeal not having been filed duly signed & stamped as required under the rules, it cannot be said that any appeal was pending before the P. C. of the Banaras State which could stand transferred to this Ct. under Rule 3 (3), Banaras State (Abolition of Privy Council & Chief Court) Order, 1949. We can find no other provision in the Order which would entitle us either to grant the certificate prayed for leave to appeal to the S. C. or to allow learned counsel, as has been orally prayed for by him, leave to amend his appln. & treat it as a regular first appeal in this Ct. In our view, it was intended that where there was no appeal pending against a decision of the Chief. Ct. of the Banaras State, that decision would become final. In any case, no provision having been made for an appeal to this Ct. we cannot entertain any appeal.

5. The result, therefore, is that the appln. for leave to appeal to the F. C. is dismissed with costs & the oral request of learned counsel that this appln. may be allowed to be amended & treated as a memo of appeal after payment of the requisite c-f. is also rejected.