Vishnu Pratap And Ors. vs Sm. Revati Devi And Ors. on 7 May, 1953

Equivalent citations: AIR1953ALL647, AIR 1953 ALLAHABAD 647

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This appeal has been filed by some of the opposite parties against whom an order was made by the learned Company Judge under Section 153 CO (8), Companies Act (VII of 1913). A preliminary objection has been raised on behalf of the applicant respondent 1 that no appeal lies.

2. We have confined the arguments only to the preliminary objection and, it is, therefore, not necessary to go into the facts in any detail. Rani Revati Devi filed an application in this Court under Section 153(C), Companies Act in the matter of the Vishnu Pracap Sugar Works Limited, Khadda, District Deoria. She claimed that the company was a private Ltd. Co. with a capital of Rs. 8,50,000/-, divided in 1,700 fully paid up shares of Rs. 500/- each, and most of the shares of the company were held by members of the Fadrauna Rai family. She alleged that she was a share-holder and managing director of the company and that opposite parties 2 to 4 supported by opposite parties 6 10 8, and committed various acts of misfeasance, malfeasance and mismanagement and had so conducted the affairs of the company as to promote their personal ends at the cost of the company and its other shareholders. It was further alleged that the opposite parties mentioned above having the majority of votes are in a position to oppress the minority. She claimed that the circumstances set out by her in the petition are such as would justify the winding up of the company under the just and equitable Clause (vi) of Section 162 Companies Act but, instead of asking for that relief, she wanted that the Court should pass orders for the regulation of the conduct of the company's affairs in future and pass such other and further orders detailed In the petition as may be necessary for the proper running of the company in the interest of all concerned.

3. In the same petition a prayer was made for an interim order under Section 153 (C)(8) which was as follows:

> "That pending the hearing and final disposal of this petition the applicant or some other fit and proper person be appointed as receiver to take charge of the properties, assets, books of account, papers and vouchers of the company, with power to carry on the business of the company and with all other powers under Order 40, Rule l, Civil

P. C."

The petition was supported by a long affidavit and, on notice being issued to the opposite parties, they appeared and filed objections to which the petitioner filed replies.

4. Before, however, the application under Section 153(C) could be finally heard and disposed of, a prayer was made that, pending the decision, interim relief may be granted and a receiver be appointed so that the petitioner's interest may not further suffer. On 1G-1-1953, the case was put up before the learned Company Judge in order to decide whether the interim relief sought in the petition should be granted. Due to, however, some defect in the affidavits the matter was postponed to 18th February for the consideration of the question whether an Interim relief by appointment of a receiver should or should not be granted. Arguments were addressed on the point and the learned Judge on 2-4-1953, passed an order appointing a receiver to take over charge of the company's affairs. It is against that order dated 2-4-1953, that this appeal has been filed.

5. In answer to the preliminary objection, Mr; Jagdish Swarup has relied on Section 202, Companies Act, on the provisions of Order 43, E. 1, Civil P. C. and Clause 10 of our Letters Patent read with els. 7 and 13 U. P. High Courts (Amalgamation) Order, 1948.

6. As regards Section 202, Companies Act, it provides for appeals from orders made or given, in the matter of the winding up of a company by the Court, Section 202 is as follows:

> "Appeals from orders-
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> Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary' jurisdiction."

Learned counsel has urged that the order appointing a receiver was an order or decision made or given in the matter of the winding up of a company by the Court, We do not think that this contention has any substance. Before the amendment of the Companies Act, where the Court was of the opinion that the majority was oppressing the minority so that the minority could get no relief from the domestic forum that is the vote of the share-holders, or, for sufficient other cause which need not be enumerated here the Court was of the opinion that it was just and equitable to wind up a company, it could pass an order to that effect but it could not grant relief in any other manner. To meet this hardship, the Act was amended and an alternative remedy was provided by Section 153 (C) which enabled the Court to keep the company alive and yet so regulate its affairs that the interest of the company may not be prejudiced and the interest of the share-holders may be safeguarded. This being, therefore, an alternative relief in place of the relief of winding up it cannot be said that the order or decision was made or given in the matter of winding up of a company.

The petitioner applying u/s. 153 (C) does not ask for the winding up of the company but prays that instead of the company being wound up the other relief under that section may be granted to him.

Part V, Companies Act beginning with Section 155 deals with winding up of companies, while Section 153 (C) is in part IV which deals with management and administration of a company. It may in this connection be pointed out that by Section 83 of the Amending Act (22 of 1936) Sub-section (7) was added to Section 153 which gave a right of appeal from any order made by the Court exercising original jurisdiction under that section to the authority authorized to hear appeals from the decisions of the Court. Section 153 (C) was added by Section 7 of the Amending Act (52 of 1951) and there is no special provision for an appeal in that section. If the case, therefore, does not come under Section 202 for an order made under Section 153(C) the appellants will have to rely on some other provision of law giving them the right to appeal.

7. Learned counsel for the appellants has relied on --'Lawrence Dawson v. J. Hormasji', AIR 1932 Rang 154 (A) but we do not see how that case is at all helpful. In that case there had been an order of winding up of a company and, in the course of the winding up of the company, a petition was filed by the liquidators under Section 153, Companies Act praying for the sanction of the Court to a scheme for the re-

organisation of the capital of the company. The learned company Judge, however, refused to grant the sanction and rejected the petition. The learned Chief Justice, held that an appeal lay from an order rejecting a scheme both under Section 202, Companies Act, and Clause 13, Letters Patent of the Rangoon High Court. The order in that case was passed in the course of the winding up proceedings and it might have been treated as an order made or given in the matter of the winding up of the company, though we have grave doubts whether even to that case Section 202 applied. The learned Chief Justice, however, based it in the alternative under Section 202, as well as Clause 13 of the Letters Patent. Now, that Section 153 has been amended and Sub-section (7) added to it, an appeal would clearly lie under Sub-section (7) of Section 153.

8. Reliance is also placed on a decision of the Calcutta High Court in -- 'Levy Brothers and Knowles, Ltd v. Subodh Kumar', AIR 1927 Cal 689 (B). In that case in the course of the voluntary winding up of a company the liquidators had applied to the Court under Section 215 Companies Act asking that they might be at liberty to admit the claim of the appellants. The learned Company Judge made an order to the effect that the liquidators were not to admit the claim unless the appellants brought a regular suit and obtained a decree. Against that order an appeal was filed. It was held that the order of the Judge in the winding up amounted to a refusal to the creditors of their important right to establish their claim in the winding-up proceedings and it was a "judgment" under Clause 15 of the Letters Patent from which an appeal, under Section 202, Companies Act, would lie. It would thus appear that the order was made in the matter of the winding-up of a company and it has nothing to do with an order like the one before us appointing an interim receiver pending the final disposal of an application under Section 153 (C). We are, therefore, not satisfied that the appellants have any right of appeal under Section 202, companies Act.

9. It was next urged that an appeal lies to us under Order 43, Rule 1, Civil P. C. It was urged that the order passed by the learned Judge appointing a receiver was an order under Order 40, Rule 1, Civil P. C. and an appeal against that order was provided for in Order 43, Rule 1, Civil P. C. Learned counsel has referred to Sections 116 and 117, Civil P. C. and has urged that, save as provided in Part

IX or Part X or in the rules, the provisions of the Code of Civil Procedure apply to High Courts In Part A and B States. Reference is also made to Order 49, Rule 3, Civil P. C. and it is urged that Orders 40 and 43 are not excluded therein and they, therefore, apply to a Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

It is true that Orders 40 & 43 both apply to the High Court but the question here is whether Order 43 makes provision for an appeal from one court to another or it is intended to cover cases of an appeal from one Judge to a bench of the same Court. Section 94, Civil P. C. gives a civil Court, including a High Court, power to pass various orders to prevent the ends of justice being defeated and Clause (d) of this section provides for appointment of a receiver of any property. Part VII, Civil P. C. deals with appeals and Section 96 provides that an appeal against a decree passed by a Court shall lie to a Court authorised to hear appeals from the decisions of such Court. Clearly Section 96 contemplates two separate Courts, one being authorised to hear appeals from a decree passed by the other. While Section 95 deals with original decree, Section 104, Civil P. C. deals with orders, not being decrees, and the orders that are appealable are set out under Order 43, C. P. C. The question of an appeal from one Court to another Court is no doubt governed by the provisions of the Code of Civil Procedure but the provision for appeal from one Judge of a Court to a bench of the same Court is not provided for by the code and must be governed by the Letters Patent.

10. Though learned counsel has urged that the order was passed under Order 40, Rule 1, C. P. C., the order in fact was passed under Section 153 (C)(8), Companies Act read with Order 40 Rule 1, Civil P. C. Section 153 (C)(8) is as follows:

> "It shall be lawful for the Court upon the application of any petitioner or of any respondent to a petition under this section and upon such terms as to the Court appears just and equitable, to make any such interim order as it thinks fit for regulating the conduct of the affairs of the company pending the making of a final order in relation to the application."

It is not necessary for us to consider whether, if Sub-section (8) was not there, the Court could during, the pendency of an application under Section 153(C) appoint a receiver or not. The appeal, however, as has been frequently said, is a creature of statute and, unless, there is a provision for an appeal, no appeal would lie. The point that Order 43 relates to appeals from one Court to another and not from a Judge of a Court to a bench of the same Court is covered by authority.

In -- 'Hurrish Chunder v. Kali Sunderi Debi', 9 Cal 482 (P. C.) (C) where the question was. whether an appeal from a single Judge to a Division Bench of the Calcutta High Court was barred by Section 538 of Act 10 of 1877, their Lordships held that the restriction in Section 588 did not apply to an appeal from one Judge to a bench of the same Court, to which appeals Clause (15) of the Letters Patent was applicable. Section 104, Civil P. C. (Act 5 of 1908) has now replaced Section 588 of Act 10 of 1877 with this difference that while in Section 588 no appeal could be filed against an order which did not come under that section, Section 104 now provides that an appeal shall lie from the orders enumerated in Section 104 or by any law for the time being in force and from no other orders, but the fact remains that their Lordships of the Judicial Committee held that Section 588, which is now

equivalent to Section 104, applied to an appeal from one Court to another and not to a case of an appeal from a Judge of a Court to a bench of the same Court. To the same effect is a Full Bench decision of the Calcutta High Court in -- 'Toolsee-Money Bassee v. Sudevi Dasee', 26 Cal 361 (D). Mr. Woodroffe in the course of his argument pointed out in that case that " a Judge exercising the original civil jurisdiction of the High Court is not subordinate to-the High Court; he is 'the High Court'. No appeal lies or can lie, under the Civil Procedure Code, from the decree or order of the High Court in the exercise of its original civil jurisdiction; the appeal is by virtue of Clause' 15 of the Letters Patent."

This argument was accepted by the Full Bench which held that such appeals were governed by the Letters Patent and not by Section 588 of the Code. (l0a) In -- 'Mathura Sundari v. Haran Chandra', AIR 1916 Cal 361 (E) Sanderson, C. J. and Mookerjee J. were inclined to take a different view and Woodroffe J. exnressed no opinion on the point. It was held in that case that the order was a judgment within the meaning of Clause 15 of the Letters Patent and was, therefore, appeal able.

11. The difficulty, however, about accepting this view is that while, in the case of an order, which is appealable under Section 104 or Order 43, Civil P. C. an appeal would lie to a Court to which it is subordinate, what would happen to cases, if the Code of Civil Procedure, as such is applied where ad order similar to an order mentioned in Order 43 is passed by a bench and not by a single Judge. Quite often questions whether a receiver should be appointed, whether an injunction should be issued and similar other matter are referred to and dealt with by Division Benches of the High court. If Section 104 read with Order 43 makes all these orders appealable then what would be the Court to which appeals would lie from an order passed by a Division Bench and not by a single Judge. We are not satisfied that Section 104 or Order 43 ever intended to deal with appeals from a Judge or Judges of one Court to a larger number of Judges in the same Court. It is no doubt true, as has been held by their Lordships of the Judicial Committee in -- 'Mt. Sabitri Thakurain v. Savi', AIR 1921 PC 80 (F) that Section 104 as well as Order 43 apply to High Courts but it does not mean that they give any right to an appeal from an order by a Judge or Judges of that Court to I a larger number of Judges of the same Court independently of the Letters Patent of the Court. As we have said if Order 43 or Section 104, Civil P. C. were made applicable per so, without reference to the Letters Patent, than even an order passed by a bench would come under those provisions, but before an appeal can be filed there will have to be a Court constituted for hearing an appeal and the only provision for hearing an appeal, from the judgment of a single Judge, by a bench of two or more Judges of the same Court is contained in the Letters Patent of the Chartered High Courts. An order, to come under the Letters Patent, must be a judgment, and, if an order is not a judgment, then Clause 10 of the Letters Patent would not apply and there is no provision for constituting a bench of more than one Judge to hear such an appeal. We, therefore, fail to understand how Order 43 Rule 1, or Section 104, Civil P. C. without any reference to Clause 10 of the Letters Patent, can help the appellants.

12. Coming now to Clause 10 of the Letters Patent, a great deal of controversy has raged round She word "judgment" and what it means. In the Letters Patent itself we have several 'clauses in which provisions are made for appeals. Clause 10 deals with an appeal from the judgment of a single Judge. Clause 30 deals with appeals to the Privy Council from any final judgment, decree or order of the High Court. Clause 31 provides for appeals to the privy Council against certain preliminary or

interlocutory judgment, decree, order or sentence of the High Court. Clause 32 provides for an appeal to the Privy Council against any judgment, order or sentence made by the High Court in the exercise of original criminal jurisdiction. It would thus appear that in dealing with appeals to the Privy Council the words used are "Judgment, final or preliminary, or interlocutory, decree, order or sentence", while in dealing with appeals from one judge to a bench of the same Court only the word "judgment" has been used. There being no appeal under the Letters Patent in criminal matters from one Judge to a larger number of Judges the word "sentence" could easily be omitted. There is also no appeal from an order passed by a single Judge in the exercise or revisional jurisdiction. Appeals only lie from judgment in civil matters in the exercise of ordinary or extraordinary original jurisdiction of the Court and, with the leave of the judge, against a decree or order made by him in the exercise of appellate jurisdiction against a decree or order made by a subordinate Court. In Section 205, Government of India Act providing for appeals to the Federal Court the words used are "judgment, decree or final order".

In -- 'Mohammad Amin Brothers Ltd. v. Dominion of India', AIR 1950 PC 77 (G), the point arose whether an order under the Letters Patent setting aside an order of a single judge directing the compulsory winding up of a company was a final order against which an appeal lay to the Federal Court and, it having been held that it was not a final order, an argument was raised that it may be a judgment if it was not a final order. Their Lordships held that by reason of the collocation of the words the word "judgment" would not include interlocutory judgment and observed as follows:

> "In English Courts the word 'judgment' is used in the same sense as a 'decree' in the Civil Procedure Code and it means the declaration or final determination of the rights of the parties in the matter brought before the Court" and referred to a previous decision of the same Court in -- 'Kuppuswami Rao v. The King', AIR 1949 FC 1 (H) in that case Kania, C. J. observed: "It is next necessary to ascertain the meaning of the words 'judgment' and 'decree'. In England in civil actions a decree is understood to be the same as a judgment. If so, as there may be a preliminary decree, there may be a preliminary judgment."

His Lordship mentioned the case of --'Onslow v. Inland Revenue Commissioners', (1890) 25 QBD 465 (I) where Lord Esher M. R. said:

> "A 'Judgment' therefore, is a decision obtained in an action, and every other decision is an order."

Kania, C. J., said:

> "These and other English decisions make it clear that in England when the word judgment or decree is used, whether it is preliminary or final, it means the declaration or final determination of the rights of the parties in the matter brought before the Court."

His Lordship pointed out that definitions of the words "judgment" and "decree" in the Code are applicable merely to that Code. Those definitions, therefore, are not helpful.

13. In -- 'Dr. Hori Ram Singh v. Emperor', AIR 1939 FC 43 (J) Sulaiman J. pointed out that:

> "Decree was a term, which, in Equity practice, corresponded to judgment at Common law. Decree is the equivalent to the term judgment in the Queens' Bench Division. A judgment is a decision obtained in an action, and any other decision is an order: per 'Cotton L. J. in Ex Parte Chineres', '(1884) 12 QBD 342 (K)'."

His Lordship went on to say that: "The word 'judgment' occurs in Clause 10 Letters Patent of the Allahabad High Court and Clause 15, Letters Patent of the Calcutta, Madras and Bombay High Courts, and 'final judgment' in Clause 30 and 39 respectively. As they had been drafted in England, the first interpretation put upon the word was more or less in the English sense and not that used in the Civil Code." The earliest decision of this Court referred to us as to what the word 'judgment' means is --'Muhammad Niam-Ul-Lah v. Ihsan Ullah', 14 All 226 (FB) (L). In this case Sir John Edge, C. J., held that "the word 'Judgment' in Clause 10 of the Letters Patent means the express decision of a Judge of the Court which leads up to and originates an order or decree."

14. Many learned Judges have tried to explain what the word 'judgment' used in the relevant clause of" the Letters Patent means and a reference to some of them might be helpful. In the --'Justices of the Peace for the Town of Calcutta v. Oriental Gas Co. Limited', 17 WR 364 (M) the learned C. J. Sir Richard Couch, said:

> "We think that 'judgment' in Clause 15 means a decision which affects the merits of the question between the parties determining some right or liability. It may be either final or preliminary or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it leaving other matters to be determined."

15. In -- 'Ebrahim v. Fuckrunnissa Begum', 4 Cal 531 (N) Garth, C. J. defined the word 'judgment' as follows:

> "I think that word 'judgment' means a judgment or decree which decides the case one way or the other in its entirety, and that it does not mean a decision or order of an interlocutory character, which merely decides some isolated point, not affecting the merits or result of the entire suit."

In -- Tuljaram Bow v. Alagappa Chettiar', 35 Mad 1 (PB) (O) Sir Arnold White, C. J., said that the word "Judgment" did not necessarily mean all orders in civil proceedings. But the test according to him was not the form of the adjudication but its effect on the suit or proceeding in which it was made. The learned Chief Justice went on to say that "an order or an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment effective if obtained) -- e.g., an order on an application for an interim injunction, or for

the appointment of a receiver is a 'judgment' within the meaning of the clause."

Krishnaswami Ayyar, J. in this case quoted Danial's Chancery Practice, Volume I, where the definition given was as follows:

> "A judgment is a sentence or order of the Court, pronounced on hearing and understanding all the points in issue, and determining the right of all the parties to the cause or matter. It is either interlocutory or final." The learned Judge was of the opinion that a more accurate definition was to be found in Black on 'judgment' where the author had said: "We may define a 'Judgment' as the determination or sentence of the law pronounced by a competent Judge or Court as the result of an action or proceeding instituted in such Court affirming that upon the matters submitted for decision a legal duty or liability does or does not exist."

16. In -- 'Ruldu Singh v. Sanwal Singh', AIR 1922 Lah 380 (2) (P) Shadi Lal J. expressed the opinion as follows:

> "It is, therefore, impossible to lay down any definite rule which would meet the requirements of all the cases, and the only thing which can be said is that in determining whether an order constitutes a judgment or not the Court must take into consideration the nature of the order and its effect upon the civil proceeding in which it was made."

17. In --'Sbanazadi Begam v. Alakh Nath', AIR 1935 All 620 (2) (PB) (Q) reference was made to the decision of Sir John Edge in the case of --'Sewak Jaranchod Bhogi Lal v. Dakore Temple Committee', AIR 1925 PC 155 at p. 156 (R) where his Lordship laid down that: " The term judgment in the Letters Patent of the High Court means in civil cases a decree and not a judgment in the ordinary sense." and the decision of the Pull Bench of this Court in --'Sital Din v. Anant Ram'. AIR 1933 All 262 (S) in which it was held that the word "judgment" in Clause 10 of the Letters Patent should not be read in a restricted sense and that an order of remand under Order 41, Rule 23, which effectually disposes of the appeal before the High Court amounts to a judgment, whether it amounts to a decree or not. The learned Judges further held that the order extending the period of limitation was not a judgment and therefore no appeal lay under Clause 10 of the Letters Patent.

18. A comprehensive definition was attempted to be given by Hidayatullah J. in -- 'Manohar Damodar v. Baliram Ganpat', AIR, 1952 Nag 357 at p. 376 (T). The learned Judge held:

> "A judgment means a decision in an action whether final, preliminary or interlocutory which decides either wholly or partially, but conclusively in so far as the Court is concerned, the controversy which is the subject of the action. It does not include a decision which is on a matter of procedure, nor one which is ancillary to the action even though it may either imperil the ultimate decision or tend to make it effective. The decision need not be immediately executable 'per se' but if left untouched must result inevitably without anything further, save the determination of

> consequential details, in a decree or decretal orders, that is to say, an executive document directing something to be done or not to be done in relation to the facts of the controversy. The decision may itself order that thing to be done or not to be done or it may leave that over till after the ascertainment of some details but it must not be interlocutory having for its purpose the ascertainment of some matters or details prior to the determination of the whole or any part of the controversy."

19. In --'M. A. Janki v. M. A. Srirangammal', AIR 1953 Mad 38 (U) an order rejecting an application under Order 41, Rule 19, Civil P. C. to restore and rehear an appeal dismissed for default of appearance was held to be neither a judgment nor a decree nor a final order. No doubt those observations were made with reference to Art. 133 of the Constitution and it may be said that the word 'judgment' in the Constitution does not necessarily mean, the same thing as the word "judgment" in the Letters Patent.

20. Prom the case discussed above it would appear that every order passed by a learned single Judge in the exercise of his civil jurisdiction is not a judgment. What is or what is not a judgment will have to be decided in each case with reference to its effect on the rights of the parties. In -- 'The Jwala Bank Ltd. v. Shitla Prashad Singh', AIR 1950 All 309 (V) it was held by a bench of this Court that a judgment means an adjudication which conclusively determines the rights of the parties and not a mere interlocutory order during the pendency of a case. Judged from that point of view it cannot be said that the learned Judge has determined any rights between the parties. No doubt it is true that in determining the question whether a receiver should or should not be appointed the learned Judge had to express an opinion as to the maintainability of the application and whether 'prima facie' the facts justified the passing of an interim order under Section 153(C)(8), Companies Act. By reason of those observations Mr. R. C. Chowdhry urged at one stage that the learned Judge had finally disposed of the application under Section 153 (C) and his order was an order under Sub-sections (4) and (5) of that section and it was an interim order under Section 153 (C) (S). When, however, faced with the entries in the order-sheet the learned counsel had to admit that the application under Section 153 (C) was still pending and the learned Judge had purported to appoint an interim receiver pending final disposal of the application.

21. It may be that by reason of the appointment of receiver the appellants are caused inconvenience and their rights have been interfered with, but it cannot be said that orders have been passed disposing of the application under Section 153 (C), Companies Act.

22. Shri Jagdish Sarup, learned counsel for the appellants, has urged that the order passed by the learned single Judge should be held to be a judgment as it, at least, finally disposed or the application for an interim order making arrangements for the management of the affairs of the company & any order, which finally disposes of some dispute between the parties must be held to be a judgment. This interpretation, if accepted, would widen the scope of the word 'judgment' in Clause (13) of the Letters Patent so as to include every order passed on any application raising a dispute during the pendency of a suit or proceeding even though it may not affect the merits of the controversy between the parties in the suit itself nor may it terminate or dispose of the suit or proceedings on any ground. Such a wide interpretation cannot be accepted. Their Lordships of the

Supreme Court, in -- 'Asrumati Debi v. Rupendra Deb', AIR 1953 SO 193 (W) considered whether an order for transfer of a suit made under Clause (13) of the Letters Patent of the Calcutta High Court was or was not a judgment within the meaning of Clause (15) of the Letters Patent and held:

> "In the present case, a single Judge of the High Court had decided this question in favour of the plaintiff in the suit; but a decision on any and every point in dispute between the parties to a suit is not necessarily a "judgment". The order in the present case neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. An order for transfer cannot be placed in the same category as an order rejecting a plaint or one dismissing a suit on a preliminary ground as has been referred to by Couch C. J. in his observations quoted above. An order directing a plaint to be rejected or taken off the file amounts to a final disposal of the suit so far as the Court making the order is concerned. That suit is completely at an end and it is immaterial that another suit could be filed in the same or another Court after removing the defects which led to the order of rejection. On the other hand, an order of transfer under Clause (13) of the Letters Patent, is, in the first place, not at all an order made by the Court in which the suit is pending. In the second place, the order does not put an end to the suit which remains perfectly alive and that very suit is to be tried by another Court, the proceedings in the latter to be taken only from the stage at which they were left in the Court in which the suit was originally filed."

This decision by their Lordships of the Supreme, Court makes it clear that an order, even if it disposes of another point in dispute between the parties to a suit which has been raised by a separate application and which may be ancillary to the suit itself, is not necessarily a judgment. The mere fact that in the case before us, the order passed by the learned Single Judge has disposed of the dispute relating to the interim management of the company cannot, therefore, justify the inference that the order amounts to a judgment.

23. The preliminary objection, in our view, has substance and the appellants have failed to satisfy us that they have a right of appeal against the interim order.

24. The appeal fails and is dismissed with costs.