Ram Rakshpal vs Amrit Dhara Pharmacy Ltd. And Ors. on 4 March, 1954

Equivalent citations: AIR1954ALL691, AIR 1954 ALLAHABAD 691

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is an appeal under Chapter IX, rule 10, of the Rules of Court & Section 10 of the Letters Patent, read with Articles 225 and 372 of the Constitution of India.

2. Ram Rakshpal, the appellant, filed an application, Criminal Miscellaneous Application No. 51 of 1953, for contempt of court proceedings against certain parties for reasons given in the affidavit accompanying the application. The application was dismissed by the Hon'ble the Chief Justice as having no force. This is an appeal against that order.

3. We heard the learned counsel on the question about the maintainability of the appeal. He relies on clause 10 of the Letters Patent of this Court.

The relevant portion of that clause is: "And we do further ordain that an appeal shall lie to the said High Court of Judicature at Allahabad from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act.....".

4. It is submitted for the appellant that this order of the learned Chief Justice was a judgment within the meaning of that term in Clause 10 of the Letters Patent and that this judgment was not one of the judgments excepted from appeal. It can be a judgment not open to appeal if it be made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act or in the exercise of criminal jurisdiction as it was not passed in the exercise of appellate jurisdiction or revisional jurisdiction.

We are of opinion that the order appealed against is not a judgment contemplated by Clause 10 of the Letters Patent. The word 'judgment' as used in the Letters Patent of the Calcutta High Court came for interpretation by the Supreme Court in -- 'Asrumati Debi v. Kumar Bupendra Deb', AIR 1953 SC 198 (A). The question was whether an order for transfer of a suit, made under Clause 13 of the Letters Patent of the Calcutta High Court, was a judgment or not within the meaning of Clause 15 of that Letters Patent. It was held that such an order was not a judgment.

Their Lordships of the Supreme Court took into consideration the meaning given to the word 'judgment' in similar clauses by the Calcutta High Court in -- 'Justices of the Peace of Calcutta v. Oriental Gas Co.', 8 Beng LR 433 (B) and the Madras High Court in -- 'Tuljaram v. Alagappa', 35 Mad 1 (FB) (C) and found that the order of transferring a suit did not come within either of the two definitions. Sir Richard Couch C. J. said as follows in the Calcutta Case:

> "We think that 'judgment' in Clause 15 means a decision which affects the merits of the question between the parties by 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."

The necessary ingredients of a judgment, according to this view, are that it should affect the merits of the question, that the question be between the parties and that the decision should determine some right or liability.

5. Sir Arnold White C. J. observed thus in the Madras case:

> "The test seems to me to be not what is the form of the adjudication, but what is its effect on the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the court before which the suit or proceeding is pending, is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause."

6. The Supreme Court further referred to the judgment of the Full Bench of the Rangoon High Court in -- 'Dayabhai v. Murugappa Chettiar', AIR 1935 Rang 267 (PB) (D) where it was held that the term 'judgment' in the Letters Patent meant a decree in a suit by which the rights of the parties in the suit were determined.

7. As already mentioned their Lordships of the Supreme Court did not determine the true meaning and scope of the word 'judgment' as occurred in the various clauses of the Letters Patent of the various High Courts and decided in the appeal before them that the order under appeal could not be regarded as a judgment according to the views of either the Calcutta, Madras or any other High Court as it neither affected the merits of the controversy between the parties in the suit itself nor it terminated or disposed of the suit on any ground.

8. In -- 'Shamzadi Begam v. Alakh Nath', AIR 1935 All 620 (2) (E), the Pull Bench had to consider whether an order by a single Judge dismissing an application under Section 5 of the Limitation Act and refusing to extend the time for filing an appeal or an application, as the case may be, was a judgment within the meaning of Section 10 of the Letters Patent and held that it was not a judgment. It was observed at page 624 :

> "It follows accordingly that where the court has some discretion in the matter and allows an appeal or application to be filed beyond time as a matter of concession on being satisfied that there is sufficient cause for the delay, it is not really deciding the right of the parties nor adjudicating upon their rights and liabilities. The order is in the form of an interlocutory order in a pending matter and the disposal of this matter does not automatically put an end to the appeal itself, which is to be dismissed subsequently.
>
> If we were to accept the contention urged on behalf of the appellant that every order passed by a single Judge which puts an end to or terminates the proceeding, or which has by implication the necessary effect resulting in such a termination, is a judgment the result would be that appeals would be permissible from dismissal for default, or dismissal for want of prosecution, or dismissal on non-payment of costs of printing, translation, etc., or on failure to furnish security. To hold this would be going against several decisions of this Court."

It would appear, therefore, that the word 'judgment' in Clause 10 of the Letters Patent refers to a decision which determines the rights of the parties to a proceeding.

8a. In proceedings for contempt of court the person who initiates the proceedings is not really a person who has got any right in himself in connection with the alleged commission of contempt of court. In matters of contempt he simply informs the Court of certain acts of the other party which, according to him, amount to contempt of court. It is for the Court then to take into consideration whether those acts, if proved, do amount to contempt of court and if they do whether the matter is such in which action should be taken. Contempt of court proceedings are really proceedings between the Court and the person proceeded against.

The person who moves the Court has no right to insist that proceedings must be taken and therefore it should follow that any order refusing to take proceedings for contempt of court is not an order which determines the rights of the applicant and the opposite party and therefore such an order is not a judgment for the purposes of Clause 10 of the Letters Patent, such a view was taken in -- 'Narendrabhai Sarabhai v. Chinubhai Manibhai', AIR 1936 Bom 314 (F). Beaumount C. J. observed at p. 314:

> "It is difficult to see how an order of the Court refusing to commit a man for breach of an undertaking given to the Court can be said to affect the merits of any question between the parties. The undertaking is given to the Court; if it is broken, and that fact is brought to the Court's notice, the Court may take such action as it thinks fit. If

> it comes to the conclusion that the order has been deliberately broken, it will probably commit the defaulter to jail, but the Court is free to adopt such course as it thanks fit."

Rangnekar J. observed at page 315:

> "On the notice of motion there was, in my opinion, no question between the parties. Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority."

With respect we fully agree with these observations.

9. The learned counsel for the appellant referred to -- 'Mohendra Lall Mitter v. Anundo Coomar Mitter', 25 Cal 236 (G) where it was held that an order refusing to take action for contempt of court was appealable. The judgment gives no reasons for the view taken.

10. In view of our opinion that the order appealed against does not amount to a judgment within the meaning of that expression in Clause 10 of the Letters Patent we hold that no appeal lies against that order. It is, therefore, no more necessary to decide whether the order was passed in the exercise of criminal jurisdiction and therefore even if it amounts to a judgment it was not appealable.

11. We, therefore, dismiss this appeal.