

Selected Marble Home and ors. Vs. Arun Kumar Gupta and anr.

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Court : Delhi

Decided On : Aug-31-1994

Reported in : 1994IVAD(Delhi)521; 1994(30)DRJ725; 1994RLR454

Judge : M.J. Rao, C.J. and; Anil Dev Singh, J.

Acts : [Delhi High Court Act, 1966](#) - Sections 10

Appeal No. : First Appeal No. 228 of 1993

Appellant : Selected Marble Home and ors.

Respondent : Arun Kumar Gupta and anr.

Advocate for Pet/Ap. : Swantantar Kumar,; S.C. Tripathy,; S.K. Singla,;

Judgement :

M. Jagannadha Rao, C.J.

(1) This appeal is filed under Section 10 of the Delhi High Court Act read with Order 43, Rule 1 Civil Procedure Code against the order of the learned Single Judge dated 27.9.1993. The appeal is preferred by the plaintiffs.

(2) The appellants filed the suit under Section 20 of the Indian Arbitration Act seeking the filing of the arbitration agreement and a reference to arbitration as Suit No. 3708/91. In the suit, the appellants relied upon the agreement dated 27.8.1990 (Annexures G & H in this F.A.O) contending that certain disputes have arisen

between the parties which required to be referred to arbitration. The appellants are contending that the two agreements are license agreements while the respondents are contending that though the agreements dated 27.8.1990 are true and purport to be agreements of license, their real nature is that they must be treated as lease agreements. A further objection has been raised that the agreements, though they bear stamp duty of Rs. 5.00 each sufficient to treat them as agreements of license, they must be treated as lease agreements and are insufficiently stamped, if so treated.

(3) Under the impugned order dated 27.9.1993, the learned Single Judge- did not decide whether the agreements are agreements of licenses as they, on their face, purport to be or, whether they really amounted to lease deeds or agreements to lease. He did not even say that if treated as agreements of license, the stamp duty of Rs. 5.00 on which each of them was engrossed, was not sufficient. Nor did he decide that their real nature was different and that they must be treated as leases or agreements of lease. Instead he passed an order on 27.9.1993 - 'be sent for adjudication to the Collector of Stamps'. It is against this order that the plaintiffs have come up in appeal.

(4) A preliminary objection is raised for the respondents that while Order 43, Rule I Civil Procedure Code is not attracted, the order of the learned Single Judge is not even a 'Judgment' so as to fall within Section 10 of the Delhi High Court Act. Reliance is placed on Shah Babulal Khimji's case : [1982]1SCR187 .

(5) On the other hand, learned counsel for the appellants submits that the order affects valuable rights of the parties and that it is appealable under Section 10 of the Delhi High Court Act in view of the general principle mentioned in Shah Babulal Khimji's case (supra). Reference is made to certain other Judgments of the Delhi High Court and of the Supreme Court dealing with the question as to what is 'Judgment'.

(6) It is true that without going into any question, the learned Single Judge has passed an order referring the agreements for 'adjudication' while it is true, as contended for the respondents that under Section 33(2)(b), the duty of 'examining' and 'impounding' any instrument 'may' be delegated to an officer, we are clearly of

the view that the provision is an enabling one and does not preclude a Judge sitting on the Original Side of the High Court from 'examining' the question whether the instruments are 'license agreements' bearing sufficient stamp duty or whether, on a construction thereof, they must be deemed to be lease agreements or leases requiring higher stamp duty.

(7) But the question is whether the order referring the matter to adjudication is a 'Judgment'. Unless an appeal lies, we cannot interfere.

(8) The Judgment in Shah Babulal Khimji's case (supra) is the leading Judgment as to the meaning of 'Judgment'. It, no doubt, says that if by an order of a learned Single Judge valuable rights of the parties are affected, then it can amount to a 'Judgment'. If the matter rested merely on applying the above said general principle to an order sending documents for adjudication under the Stamp Act, we would have considered whether the impugned order does not affect valuable rights of parties. But, unfortunately, for the appellant, there is a specific passage in Shah Babulal Khiniji's case (supra) which states that the order of a Single Judge relating to the 'relevancy' or 'admissibility' of a document is not a 'Judgment'. for purposes of Letters Patent. The said passage reads as follows :- '115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment'.

(9) In view of the above said specific passage, we have no choice in the matter and we are precluded by Article 141 of the Constitution of India, from entertaining this appeal under Section 10 of the Delhi High Court Act. Learned counsel for the appellants referred to certain other decisions of the Delhi High Court and Supreme Court dealing with other types of 'orders' which were held to be 'judgments' but, in our view, it is not necessary to refer to them inasmuch as Shah Babulal Khiniji's case (supra) contains a passage in regard to orders of Single Judge as to

'relevancy' or 'admissibility' of documents and says they are not 'judgments'. As this passage is binding on us, we hold the appeal as not maintainable. If an order deciding whether the document is relevant or admissible is not a 'judgment', a fortiori, an order sending the document for adjudication, cannot be a judgment.

(10) The result is unfortunate. May be, if the appellants are so advised, they can go before the learned Single Judge by way to review and for delay condensation. The appeal is dismissed.

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