Dhangir Vs. Jankidas

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SooperKanoon Citation : sooperkanoon.com/751821

Court : Rajasthan

Decided On : Sep-14-1989

Reported in : AIR1990Raj102

Judge : K.S. Lodha and; R.S. Verma, JJ.

Acts : Constitution of India - Articles 132, 133, 134 and 134A; Code of Civil Procedure (CPC) , 1908 - Order 45, Rule 1; Limitation Act, 1963 - Article 1963

Appeal No. : Civil Leave to Appeal to Supreme Court Nos. 1 and 2 of 1989

Appellant : Dhangir

Respondent : Jankidas

Advocate for Def. : M.M. Vyas, Adv.

Advocate for Pet/Ap. : M.D. Khatri and A.R. Mehta, Advs.

Disposition : Application rejected

Judgement :

Lodha, J.

1. Since these two applications arise out of the same judgment, they are being disposed of by a common order. These are two applications under Articles 133 and 134A of the Constitution praying for a certificate that the case involves a

substantial question of law of general importance and requires decision of the Hon'ble SupremeCourt arising out of the decision of this Court in D. B. Civil Special Appeal No. 20/75.

2. We have heard the learned Counsel for the parties.

3. A preliminary objection has been raised by Mr. M.M. Vyas appearing for Jankidas Mohanlal, the non-petitioners in both these cases. It has been urged by the learned Counsel for the non-petitioner that under Article 134A a certificate can be issued by this Court as envisaged in Article 132(1) or 133(1) or 134(1) either if this Court deems it fit on its own motion or if an oral application is made by or on behalf of the party aggrieved immediately after the passing or making of such judgment, decree, final order or sentence as referred to in the opening part of Article 134A. This Court has not at its own motion deemed it necessary to determine the question whether a certificate of the nature referred to in Clause (1) of Article 132 or Clause (1) of Article 133 or as the case may be Sub-clause (c) of Clause (1) of Article 134 should be granted or not, and, therefore, the only course for the petitioner to get such a certificate was to make an oral application immediately after the passing of the judgment in the said special appeal. Since that has not been done, now the petitioners cannot ask for a certificate on the basis of written applications filed after more than one month.

4. In reply, learned Counsel for the petitioners in both the cases urged that although an oral prayer could have been made for grant of the certificate immediately after the passing of the judgment, he cannot be precluded from asking for such a certificate even later on by making a written application for grant of such a certificate and such an application lies under Order 45 of the Civil P. C. It was also urged that Article 134 of the Limitation Act also envisages a written application, if the only course for asking for such a certificate by a party was to make an oral application immediately after the delivery of the judgment the provision for limitation for making an application would have been meaningless and redundant.

5. We have given our consideration to these contentions and in our opinion, the preliminary objection must prevail. It is clear that this Court did not deem it

necessary to determine the question whether a certificate of the nature, referred to in the Articles already mentioned above should or should not be granted and now the certificate is being prayed for by making written application after more than a month of the passing of the judgment and it is only on that basis that the certificate is prayed for. Article 134A has been introduced by the amendment No. 44 of 1978 in the Constitution and this amendment appears to have been brought in because earlier there were no clear rules when an application for grant of certificate referred to in Articles 132, 133 and 134 was to be made and different High Courts took different views and made different rules. Therefore, in order to remove the anomaly, Article 134A had to be introduced by the 44th Amendment and now the procedure and the question of limitation has been determined by providing that an oral application has to be made by or on behalf of the party aggrieved immediately after the passing or making of the judgment, decree, final order or sentence. No other mode by a later application by the parties is provided for. Of course, the Court has been given a discretion to consider this question if it deems necessary suo motu but if the Court, does not, take any step in this respect suo motu, then the only course open to the parties for making such an application is by way of making an oral application immediately after the passing or making of the judgment, decree, final order or sentence and no written application is either envisaged or entertain-able. The provisions of Order 45, C.P.C. or Article 134 of the Limitation Act would not be of any avail to the petitioner in as much as when a constitutional provision is in conflict with any other provision of law, the constitutional provision would always prevail. Here when Article 134A has been introduced by the 44th Amendment, the earlier provisions of Order 45, C.P.C. or Article 134 of Limitation Act would not come to the aid of the petitioners. A similar view has been taken by a Full Bench of the Karnataka High Court in Keshava S. Jamkhandi v. Ramachandra S. Jamkhandi, AIR 1981 Kant 97. Calcutta High Court also appears to have taken the same view as has been digested in the AIR Manual on Article 134A at page 436, Fourth Edition, Eighth Volume in the case reported in (1980) 1 Cal HN 235.

6. In this view of the matter, these written applications for grant of the certificates for leave to appeal to the Hon'ble Supreme Court cannot be entertained and are hereby rejected.