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Court : Chennai

Decided On : Feb-25-1988

Reported in : (1989)1MLJ147

Appellant : R. Kannan and ors.

Respondent : indchem Electronics Limited, Developed Plots for Electrical and Electronics Industries

Judgement :

Ratnavel Pandian, J.

1. In this case, a preliminary objection is taken that the appeal is not maintainable as the order impugned is not a judgment within the meaning of Clause 15 of the Letters Patent of this High Court. Much argument was addressed by both the parties on this substantive question of law as to the scope, ambit and meaning of the word 'Judgment'. As we are not concerned with the entire facts of the case, it is not necessary to deal with the same in this judgment, but suffice to mention certain salient facts for the determination of the legal question.

2. The respondent-company has filed O.S. No. 551 of 1987 for the following reliefs:

(a) directing the defendants jointly and severally to pay Rs. 6 lakhs as damages for the torts committed by them.

(b) restraining the defendants from carrying on business activity in the manufacture of computers and computer peripherals like Alpha computers and computer peripherals like Alpha Numeric Terminals, Colour Graphic Terminals and other products identical or similar in design, composition and configuration as that of the plaintiff's indigenously developed products and from making use of materials such as designs, drawings bills of material and other valuable information pertaining to the manufacture of the products referred to above that have been illegally obtained/stolen from the plaintiff company through the first defendant;

3. The above reliefs are based on the allegation that the first appellant (first defendant), a Master of Engineering from Indian Institute of Science, was holding a managerial position the respondent-company, which is engaged in the business of manufacture, sale, installation, servicing and maintenance of professional electronic equipments such as bio-medical equipments, mini computers, computer terminals, personal computers and other micro-processor based system, and he was actively associated with the respondent-company in the research and development activities relating to new products like Alpha Numeric Terminal, Colour Graphic Terminal, etc. According to the respondent, as per Clause 6 of the order of appointment dated 11.7.1983, the first appellant was to maintain strict secrecy with regard to the work which may come to his knowledge in the course of his work and was prohibited from engaging in any other trade, business, or occupation while on leave or off or on holiday without obtaining the Management's prior permission in writing. Clause 5 of the appointment order states that the first appellant would be by all rules and regulations and standing Orders of the respondent Company. While it is so, according to the respondent, in the first half of 1986, defendants 1 to 4 has conceived the idea of entering the field of manufacture of computer terminals and computers and other micro-process or based systems by pirating the technology of the respondent-company through the medium of the first appellant, and as part of this master plan, the fifth appellant firm was to be formed in the first instance with the participation of the second and third appellants and the induction of the first and fourth appellants subsequently.

The respondent had come to know that the first appellant, in violation of Clauses 5 and 6 of the appointment order had not only committed breach of contract, but also committed breach of trust by pirating the technical know-how relating to the manufacture of Alpha Numeric Terminals, Colour Graphic Terminals and other computer peripherals as well as personal computers, which have been developed by the Research and Development wing of the respondent-Company at enormous cost. The first appellant resigned from the service of the respondent company on 4th June, 1987, on being demanded of it by the Company in order to prevent further theft and piracy of the technology. It is the further case of the respondent that the first appellant along with appellants 2 to 4 as partners of the fifth appellant firm is committing tortious act of manufacturing indigenous products of the respondent-Company by making use of the technology, bill of materials, market information, etc., of the respondent-Company that had been illegally obtained/stolen/pirated, and passed on the same to the fifth appellant.

4. Along with the plaint, the respondent took Application No. 3360 of 1987 seeking ad interim injunction restraining the appellants from carrying on business activity in the manufacture of products identical or similar in design, composition and configuration as that of the plaintiff's respondent's indigenously developed products and from making use of materials such as designs, drawings, bill of materials and other valuable information pertaining to the manufacture of the products by making use of the technical knowledge pirated by the first appellant pending disposal of the suit. Interim injunction was granted. Then appellants 2,3 and 5 filed Application No. 3953 of 1987 to vacate the interim injunction.

5. Baskaran J., sitting on the original side of this Court, by a common order dated 14th October 1987, passed the following order:

In such circumstances, I feel, the proper order would be to suspend the interim injunction already granted to the extent the respondents may be permitted to manufacture their products but they should not market the same until further orders are passed by this Court after obtaining expert's opinion and in the meanwhile refer the issue to an expert. In the result, the interim injunction already granted is suspended to the limited extent of enabling the respondents to

manufacture their products but they shall not carry on the business activity of marketing their products till final orders are passed by this Court after obtaining expert's opinion. Post the matter on 19.10.1987 for hearing both parties regarding the matter being referred to an expert for opinion.

6. Mr. Narayanaswami, learned Senior Counsel appearing on behalf of the respondent, would vehemently contend that no final orders have been passed by the learned Judge determining any right or liability affecting the merits of the controversy as between the parties, and the matter stood posted for further hearing on 19.10.1987 regarding the matter being referred to the expert for opinion, as such, no appeal would lie under Clause 15 of the Letters Patent, and on this short ground the appeal is liable to be dismissed as not maintainable.

7. Mr. V. Prakash, learned Counsel appearing on behalf of the appellants, would vehemently oppose the submission made on behalf of the respondent, and urge that the impugned order passed by the learned Judge would cause grave and substantial injustice to the appellants, as the learned Judge by that order prohibited the appellants from marketing the products while permitting them to manufacture, and as such, the appeal is maintainable. Mr. Narayanaswami, in support of his submission, referred to the judgment of the Full Bench of this Court in *Palaniappa v. Krishnamurthy* : (1967)2MLJ1 and *Shukoor v. Umachander* A.I.R.1976 Mad.350 : I.L.R. (1976) Mad.315 to which one of us, Ratnavel Pandian, J., was a party, whereas Mr. Prakash relies upon the decision in *Shah Babulal Khimji v. Jayabon* A.I.R.1981 1786 relating to the question as to what is the definition of the word 'judgment' occurring in Clause 15 of the Letters patent. There are a series of decisions of the Supreme Court as well as of the various High Courts with regard to the definition of the word 'judgment' appearing in Clause 15 of the Letter Patent. We think that it is not necessary to swell this judgment by recapitulating all those decisions, but suffice to refer to some important decisions which would be relatable to the question under consideration.

8. The relevant portion of Clause 15 of the Letters Patent may be extracted thus:

And we do further ordain than an appeal shall lie to the said High Court of Judicature at Madras, Bombay, Fort William in Bengal from the Judgment... of one

Judgment of the said High Court.

Clause 15 makes no attempt to define what a judgment is. As Letters patent is a special law which carves out its own sphere, it would not be possible for us project the definition of the word 'Judgment' appearing in Section 2(9) of the Code of Civil Procedure, 1908, which defines 'judgment' as meaning 'the statement given by the Judge of the grounds of a decree or order' into the Letters patent.

9. In *Mt. Shahzadi Begam v. Alakha Math* : AIR1935 All620 , Sulaiman C.J., pointed out that as the Letters Patent were drafted long before xxx the Code of 1882 was passed, the word 'Judgment' used in the Letters Patent cannot be relatable to or confined to the definition of 'judgment' as contained in the Code of Civil Procedure which came into existence long after the Letters Patent were given. In this connection, the learned Chief Justice observed as follows:

It has been laid in numerous cases that as the Letters Patent were drafted long before even the earlier Code of 1882 was passed, the word 'Judgment' used therein does not mean the judgment as defined in the existing Code of Civil Procedure. At the time the word 'judgment' does not include every possible order, final, preliminary or interlocutory passed by a Judge of the High Court.

10. In *Shah Babulal Khimji v. Javaban* : [1982]1SCR187 , the Supreme Court found itself in complete agreement with the above observations made by the Allahabad High Court on this aspect of the matter. A Full Bench of the Bombay High Court in *Elphinstone Spg and Mfg. Mills Co. Ltd v. Sondhi Sons Private Ltd* : AIR1962 Bom241 F.B. examined the question whether the order of a single Judge on the Original Side of the High Court setting aside an ex parte decree. Under Order 9, Rule 13, C.P.C. or purporting to be one thereunder does amount to a Judgment within the meaning of the expression occurring in Clause 15 of the Letters Patent, and answered that such an order does not determine the questions in controversy between the parties, and does not decide any of the merits in controvercy in the suit, and hence it is not a judgment within the meaning of Clause 15 of the Letters Patent.

11. The Calcutta High Court in *Shorab Merwanji Modi v. Mansata Film Distributors* : AIR1957 Cal727 has ruled that the term 'judgment' has been defined in the C.P.C., but that definition does not apply to the word as occurring in the Letters Patent, and the language of the Letters Patent which were issued in 1865 is not the language of the Indian Legislature, but the language of the English lawyers as it was in use amongst them before the words 'judgment', 'decree' and 'order' came to be clearly differentiated after the passing of the Judicature Acts.

12. The Lahore High Court in *Firm Badri Das Janakidas v. Kathammal and Ors.* A.I.R. 1922 Lah.185 held thus:

The term 'judgment' in Section 10 of Letters Patent includes any interlocutory judgment which decides so far as the court pronouncing such judgment is concerned, whether finally or temporarily any question materially in issue between the parties and directly affecting the subject matter of the suit.

13. Ramachandra Iyer, C.J., speaking for the Full Bench of this Court comprised of five learned Judges, in *Southern Roadways (P) Ltd., v. P.M. Veeraswami* : AIR1964 Mad194 , while interpreting the connotation and the import of the word 'judgment' occurring in Article 133 of the Constitution of India as well as in Clauses 15 and 39 of the Madras Letters Patent, pointed out thus:. the word 'judgment' in the context in which it has been used in Article 133 can only mean final determination of the right or liability, forming the subject-matter of controversy before the Court which renders the judgment. The true import of the word 'judgment or the tests by which any judicial order can be regarded as a judgment, have been elucidated by a number of leading decisions on the subject. For a proper understanding of the concept of word 'judgment' it will be useful first to refer to the cases decided under Clause 15 of the Letters Patent.

After referring to the definition of the word 'judgment' given by Sir Richard Couch C.J., in the *Justices of the Peace for Calcutta v. Oriental Gas Co.* 8 Ben L.R.433 , and the Judgment of Sir Arnold White C.J., in *Tuljaram Row v. M.K.R.V. Alagappa Chettiar* I.L.R. (1912) Mad 1, the Full Bench of this Court, observed thus:

From the above, it would follow that the proper test to ascertain whether a judicial order is a 'judgment' is to see whether in regard to matters in controversy in the court which renders the judgment, there has been completeness of adjudication.

14. This highly vexed and controversial question as to what is the real concept and purport of the word 'judgment' in Clause 15 of the Letters Patent once again came up for interpretation by a Full Bench of this High Court presided over by three Judges in *Palaniappa v. Krishnamurthy* (: AIR1968 Mad1), and the Full Bench in that case, after referring to the decision of the Supreme Court in *Asrumati Devi v. Rupendra Deb Raikot* : [1953]4SCR1159 and the Judgments of the various High Courts as well as this Court inclusive of a number of Full Bench judgments in *T.V. Tujaram Row v. M.K.R.V. Alagappa Chettiar* I.L.R. (1912) Mad.1, *Rangaswamy Chettiar and Co. v. Eswaramurthy Gounder* A.I.R. 1954 Mad.1953, and *Central Brokers v. Ramnarayana Fodder and Co.* : AIR1954 Mad1057 , held thus:

From the Supreme Court decision, it appears to us that four tests can be clearly formulated, and not merely two, as was thought to be the case by the Division Benches of this Court in *union of India v. S.S. Shanmugha Nadar* : AIR1959 Mad117 and *cork Industries v. Govindrajulu* : AIR1965 Mad87 Three of these tests may be termed as tests of positive character, and the last is really negative, but there can be no doubt that it also has relevance and force. The tests are (1) whether the order or judgment of the single Judge terminates the suit or proceedings, (2) Whether it affects the merits of the controversy between the parties in the suit itself? (3) a test that can be considered a refinement of test No. 2, but which upon juristic principle should be separately stated, namely, whether it determines some right or liability as between the two parties?; and (4) the negative test that has found express recognition in the dicta of White, C.J., with reference to *Hagho ti Koverji v. Camaji Bomaji* I.L.R. (1905) 29 Bom.249, and has not been disapproved by their Lordships of the Supreme Court in *Asrumati Debt's* case, : [1953]4SCR1159 , but which, instead, would appear to have been impliedly approved, namely, whether, apart from the actual words in the 'lis or proceeding's conceivable Order' or an order to the contrary effect, would have disposed of the suit and would come within the definitions of 'judgment'.

15. In a recent decision in *Shah Babulal Khimji v. Jayaben* A.I.R. 1981 1786, the Supreme Court went deep into this important and serious legal question which has been the subject matter of conflicting decisions of various High Courts ranging for almost a century and in respect of which no unanimity has been reached, and laid down the judgment, after referring to the numerous authorities of the Supreme Court and the other High Courts, saying 'it is high time that we should now settle this controversy once for all as far as possible'. Their Lordships of the Supreme Court have categorised 'Judgment' into three kinds, viz., (1) final Judgment, (2) preliminary judgment, and (3) intermediary or interlocutory judgment. The question posed before us relates to the third category of judgment, viz., intermediary or interlocutory judgment. In paragraph 115 of the Judgment, it is said:

Thus, in other words every interlocutory order cannot be regarded as a judgment but only those order 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.

The Supreme Court, after giving various instances which are illustrative, and not exhaustive, and which would constitute sufficient guidelines to determine whether or not an order passed by the trial Judge is a judgment within the meaning of the word 'judgment' in letters Patent, found the tests laid down by the Rangoon High Court in *Devabhai Jiwandas v. A.M.R. Murugappa Chettiar* A.I.R.1935 Rang 267), which has placed a very narrower interpretation on the term 'judgment' and has almost equated it with a decree passed by a Civil Court, as legally erroneous and opposed to the very tenor and spirit of the language of the Letters Patent and disapproved the same. But their Lordships approved and adopted the tests laid down by this Court in *Tuljaram Row's case* I.L.R. (1912) Mad.1 stating thus:

We would like to adopt and approve of generally the tests laid down by Sir White C.J, in *Tuljaram Row's case* I.L.R. (1912) Mad.1) which seems to have followed by most of the High Courts) minus the broader and the wider attributes adumbrated by Sir White, C.J., or more explicitly by Krishnaswamy Ayyar J., as has been referred to above.

Sir White C.J., in Tuljaram Row's case I.L.R. (1912) Mad.1 which is a leading case laying down the tests for interpretation of the word 'Judgment' and which seems to have found favour with most of the High Courts in India and ultimately the general approval at the hands of the Supreme Court in Shah Babulal Khimji v. Jayaben : [1982]1SCR187 (notwithstanding the fact that the Supreme Court felt that some of the tests laid down are far too wide and may not be quite correct), pointedly spelt out the various tests and observed thus:

The test seems to me to be not what is the form of the adjudication but what is its effect in 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 is not complied with, is to put an end to the suit or proceedings. I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in this suit is not, in my opinion, a judgment within the meaning of the Letters Patent.

I think, too, an order on 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.

Krishnaswamy Ayyar, J. agreed with the view of Sir White C.J., in the above case, and pointed out that even an interlocutory judgment which determines some preliminary or subordinate point or plea or settles some step without adjudicating the ultimate right of the parties may amount to a judgment. According to the Supreme Court in Shah Babulal Khimji's case : [1982]1SCR187 , if the observations of Krisnaswamy Ayyar are carried to the Logical limit every interlocutory order would have to be held to be appealable. Thus, generally concurring with the view taken by this Court in Tuljaram Row's case I.L.R. (1912) Mad.1, the Supreme Court held as follows:

Apart from the tests laid down by Sir White, C.J. the following considerations must prevail with the court:

(1) That the trial Judge being a senior Court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with the regard to the well settled principles of civil justice. Thus any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate Court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The Courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial justice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the question in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir White C.J., as also by Sir Couch C.J., as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind.

Thereafter, in paragraph 120, the Supreme Court has given 15 illustrations of interlocutory orders, which may be treated as judgment in dealing whether an order passed by the trial Judge amounts to 'judgment' within the meaning of the Letters patent.

16. Now, we shall examine the contentions of learned Counsel for both the parties and see whether the impugned order in this case which is an interim order in an interlocutory application amounts to 'judgment' within the ambit of Clause 15 of the Letters Patent. Mr. M.R. Narayanaswamy would contend that since the order impugned does not determine any right or liability an between the two parties, as contemplated in test No. 3 in *Palaniappa v. Krishnamurthy* : AIR1968 Mad1 it would not fall within the ambit of the expression 'judgment' in Clause 15 of the

Letters Patent, and as such this appeal is not maintainable. Elaborating this argument, learned Counsel would submit that the learned Judge has not passed any final order, but suspended the interim injunctions already granted to the limited extent of enabling the appellants to manufacture their products with a rider that they shall not carry on the business activity of marketing their products till final orders are passed in the application after obtaining the expert's opinion and directed the matter to be posted to 19.10.1987; but the appellants without waiting for a final order in that application, have filed this appeal. According to him, unless there is a final order determining the rights or liability as between the two parties, an appeal as against the order impugned cannot lie. Incidentally, he placed reliance on a judgment of this Court in *Abdul Shukoor v. Umachander* A.I.R. 1976 Mad.350, to which one of us, Ratnavel Pandian, J. was party, wherein it has been held:

An order such as 'ad interim injunction and notice' does not come within the purview of the first division, which we have made in the text of Order 39, Rule 1(b). It squarely comes under the second division which we thought of. So, it is purely an order which is a step in aid to a reasoned order which has to be passed after notice and after hearing both parties. Therefore, even though Order 43, Rule 1, expressly refers to an order made in Order 39, Rule 1 as an appealable order, nevertheless that order should be a decision based on some grounds and not a mere preliminary based on some grounds and not a mere preliminary order for maintenance of the status quo between the parties.

In that judgment, the Division Bench, differing from the view taken by Maharajan J., in *Mangal Achi v. Asokan* : AIR1973 Mad258, laid down the dictum as follows:.. in cases where such interim orders or ex parte orders are not founded on any reason and they cannot reasonably be characterised as formal expressions of a decision made by a Judge and which decision in turn is not based upon intelligible and acceptable grounds, the remedy available to a party affected is under Order 39, Rule 4, and not by invoking the appellate provision under Order 43, Rule 1(r), Civil Procedure Code. In a case where there is a reasoned judgment after hearing the parties and a decision based on various grounds is made one way or the other by the trial Court, then obviously that would be an order which would

come under the first division, which we have set out above in our preface an Order 39, Rule 1 and it would be appealable order.

On the basis of this decision, Mr. Narayanaswamy would urge that as there is no finality reached on a reasoned Judgment after hearing the parties, no appeal could be entertained as against the impugned order.

17. Mr. V. Prakash, placing reliance on the decision of the Supreme Court in Shah Babulal Khimji's case : [1982]1SCR187 and particularly, the observation in paragraph 113, reading.

It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense.

would submit that the expression 'judgment' should be liberally construed. According to him, since the learned Judge has put an inhibition as against the appellants from carrying on the business activity of marketing their products, though he has permitted the appellants to manufacture their products, this order would indeed cause grave and substantial injustice to the appellants, and as such it will fall within the definition of the word 'Judgment' coming within Clause 15 of the Letters Patent, and an appeal is maintainable. He also in this connection cited a decision of a Bench of this Court in Ramasayee Agro Industries Limited v. India Sugars Refineries Ltd. : AIR1983 Mad194 , wherein the Bench has pointed out that if an order causes gross or serious injustice to the party concerned, that could be treated as a judgment appealable under Clause 15 of the Letters Patent. He would distinguish the judgment in Abdul Shukoor v. Umachander A.I.R. 1976 Mad.350 stating that decision has no application to the present case since it was rendered with reference to an ex parte order granting temporary injunction, while it is not in this case.

18. The submission made by Mr. Prakash that the impugned order has caused grave and substantial injustice cannot be accepted because the manufacture of the product is only at the option of the appellants, but it is not a direction of the Court. If really the appellants are quite sure that their products are not on account of any piracy of technology of the respondent-company, they could, if they so

choose, proceed with the manufacture of their products, which products they could market if ultimately the expert opinion is in their favour.

19. Another argument that the appellants, if prohibited from marketing their products, would be compelled to face financial difficulties in meeting their expenses towards the purchase of raw materials, payment of wages to the workers, etc., cannot be a relevant consideration in a case of this nature, wherein there is a charge of piracy of technical know-how, designs, bill of the materials, market information, etc., relating to the manufacture of Alpha Numeric Terminals, Colour Graphic Terminals and other computer peripherals which the respondent company claim to have developed at enormous cost.

20. As rightly pointed out by Mr. Narayanaswamy, the interim order made in the application, which has not reached finality determining the rights and liabilities as between the parties and which cannot be said to have caused grave and substantial injustice to the appellant will not fail within the meaning of the expression 'Judgment' occurring in Clause 15 of the Letters Patent of this Court.

21. This appeal, for the discussions made above, is, in our view, not maintainable, and consequently is dismissed. But in the circumstances of the case, there will be no order as to costs.