

Susanta Kumar Chowdhury Vs. Birendra Kumar Deb and ors.

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Court : Guwahati

Decided On : Aug-30-2000

Judge : J.N. Sarma and ;H.K.K. Singh, JJ.

Acts : Indian Succession Act - Sections 100A, 104, 104(1) and (2) and 299;; [Code of Civil Procedure \(CPC\), 1908](#) - Order 43, Rule 1 - Order 39, Rules 1 and 2;; Trade Marks Act

Appeal No. : LPA No. 1 of 1996 and 1 of 2000

Appellant : Susanta Kumar Chowdhury

Respondent : Birendra Kumar Deb and ors.

Advocate for Def. : Mr. A.M. Lodh, ;Dr. H.K. Bhattacharjee, ;Mr. A. Lodh, ;Mr. D.K. Biswas and ;Mr. S. Lodh, Advs.

Advocate for Pet/Ap. : Mr. S. Deb, ;Mr. A.C. Bhowmik and ;Mr. B. Das, Advs.

Disposition : Appeals maintainable

Judgement :

ORDER

J.N. Sarma, J.

1. The preliminary objection taken in these appeals is regarding the maintainability of the appeals.

2. We have heard Mr. S. Deb, the learned senior counsel for the appellant and Mr. A. M. Lodh, the learned senior counsel for the respondents in L.P. A. No. 1 of 1996. We have also heard Mr. B. Das, the learned senior counsel for the appellants and Mr. M. S. Lodh, the learned counsel for the respondent regarding maintainability of the appeals.

3. The submission of the learned counsel for the respondents is that an appeal is provided under the Indian Succession Act under Section 299 and that this appeal decided by the learned Single Judge is final and no further appeal lies. It is the further submission of the learned counsel that Section 299 opens itself that the order passed by the learned District Judge is appealable and as such it is not a judgment. The learned counsel for the respondents relies on Sections 100A and 104, sub-sections (1) and (2). A bare reading of section 100A will show that a Letter Patent does not lie from an appellate decree or order passed by a Single Judge of a High Court. In this particular case, the matter which was being heard by the learned Single Judge was not an appellate decree. It was a First Appeal before the learned Single Judge. So Section 100A does not help. Next we come to Section 104, Sub-sections (1) and (2). This Section 104 Sub-section (1) & (2) came up for consideration before the Supreme Court reported in [1996] SCC, 49 (sic) and [1997] 3 SCC, 462. (1996) 1 SCC, 49 is a case where there was an appeal under Order 43 Rule 1 (r) of C.P.C. The appeal before Single Judge of High Court was against an interim injunction order of city Civil Court and that was decided and thereafter Letter Patent Appeal was filed before the Division Bench and Supreme Court pointed out that no further appeal would lie against the order of the Single Judge by virtue of Section 104(2). In para 6 itself the Supreme Court pointed out that against an appellate order no Letters Patent Appeal will lie. So, this case is also of no help to the respondents. The next case is (1997) 3 SCC. 462. the Supreme Court pointed out as follows :-

'The right of appeal is a creature of the statute and the statute having expressly prohibited the filing of second appeal under subsection (2) of Section 104, the right

of appeal provided under clause 10 of the Letters Patent would not be available. The main part of clause 10 clearly indicates that 'an appeal would lie from the judgment not being a judgment passed in exercise of appellate jurisdiction. 'Thereby the judgment from an appellate jurisdiction stands excluded under the first part of clause 10 of the Letters Patent itself. Therefore, the Division Bench of the High Court was right in holding that the letters patent appeal would not lie against an order of the learned Single Judge.'

This case is also not authority for the proposition/question raised in these appeals. This aspect of the matter can be considered by reading clause 15 of the Letters Patent. Clause 15 of Letters Patent provides for appeal against judgment of Single Judge of High Court. Clause has two parts. The first part, in brief, provides for such appeal in all cases except when such judgments are passed in second appeal or in exercise of revisional or criminal jurisdiction. The second part is really in the nature of exception to the first part. We are not concerned with the second part. A bare reading of the first part it will show that this appeal is maintainable. This matter can be looked at from another angle. In AIR 1970 Bombay, 278 the same question arose. There was a judgment/award under the Workmen's Compensation Act by the Commissioner as against that an appeal was filed under Section 30 of the Act before the Single Judge of the Bombay High Court. Single Judge decided the appeal and against that an appeal was preferred in exercise of the Letters Patent before the Division Bench. A preliminary objection was taken that the appeal is not maintainable and the Bombay High Court pointed out by reading first part of clause of 15 that such appeal is maintainable. We respectfully agree with the decision of the Bombay High Court. The same question arose in the case reported in AIR 1953 SC 357. That was a case under the Trade Marks Act. A decision was given by the Registrar of Trade Marks. As against that an appeal was preferred before the Single Judge of the High Court, the Single Judge decided the matter and against that an appeal was taken before the Division Bench in exercise of the Letters Patent jurisdiction. The preliminary objection was taken that the appeal is not maintainable. The Supreme Court rejected that contention and held that appeal under clause 15 is maintainable.

4. The learned counsel for the respondents also relied on Full Bench decision of this court reported in 1998 (4) GLT, 150. That was a case where the Single Judge passed an order in miscellaneous first appeal arising in respect of an order of Subordinate Court under Order 39, Rules 1 and 2 of C.P.C. So, that case is also of no help.

5. In view of the above position, we hold that both the appeals are maintainable, The preliminary objection shall stand rejected.

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