

Sandya Devi and ors Vs. Anil Gupta and ors

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Court : Jammu and Kashmir

Decided On : Nov-12-2012

Judge : Hon'ble Mr. Justice M. M. Kumar

Appellant : Sandya Devi and ors

Respondent : Anil Gupta and ors

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. LPAOW No. 146 OF 2012. Sandya Devi and ors Petitioners Anil Gupta and ors Respondent !Mr. Z.A. Shah, sr. Adv with Mr. Vipin Gandotra. Mr. D.C. Raina, Sr. Adv with Ms. Ananta Raina Adv. Mr. R.K. Gupta Sr. Advocate with Mr. Prem Nath Sadotra ^Mr. M.A. Goni, sr. Adv with Mr. Ahatshan Bhat and Mr. A. S. Kotwa, Advocates. Mr. S.S. Lehar, Sr. Adv with Mr. Vandana Sharma, Adv. Mr. Prana Kohli, Adv with Ms. Hancy Maini, Adv HONBLE MR. JUSTICE Virender Singh- JUDGE HONBLE MR. JUSTICE MUZAFFAR HUSSAIN ATTAR-JUDGE. Date:

12. 11.2012 :

: Muzaffar Hussain Attar. Maintainability of Letters Patent Appeal is under cloud in view of the stiff resistance offered by Id sr. counsel for the respondents 1 to 39. In order to appreciate the objection raised about the maintainability of L.P.A, brief narration of the facts becomes imperative. The trade of liquor in the State of J&K is regulated by J&K Excise Act. 1959 and Rules called J&K Liquor Licence, and

Sales Rules 1984. Way back on 2nd of July 2003, Excise Department issued public notice providing therein tentatively list of areas where the retail vends were likely to be set up/opened. A Committee was also constituted to make survey of the areas from the tourist point of view where vends could be opened. On the basis of the report of the Committee 89 locations were identified and the respondent Excise Department vide notice dated 22nd of Sept. 2003 invited applications for allotment of liquor vends. 7781 applications were received pursuant to the public notice issued. The respondents 1 to 39 were amongst those who responded to the notice dated 22nd of Sept. 2003. The process initiated in terms of notice dated 22nd Sept. 2003, however, did not culminate in issuance of licences as meanwhile there was shift in the liquor policy. The respondents decided to abolish sale of country made liquor and took decision to open vends for sale of Indian Made Foreign Liquor. Further 116 areas were identified for opening of liquor vends. Since to the earlier notification for grant of licence for 89 locations, the response was very huge, it was decided by official respondents that licence in respect of 116 additional vends will also be issued by considering the persons who had already filed applications. In the face of huge number of applications received, Excise Commissioner proposed to make selection by draw of lots. The State Government approved the proposal of the Commissioner and notification in this regard was issued on 25th Feb. 2004. The liquor vends were allotted by two consecutive lucky draws held on 27.02.2004. The respondents 1 to 39 were amongst those who were successful for allotment of vends in the 89 notified locations. Before the process could mature into issuance of licence matter was brought before this court in the writ petition and the writ court allowed the writ petition holding that choosing people by draw of lots was illegal. The judgment of the writ court was challenged in L.P.A No. 68/2004. The L.P Bench set aside the judgment of Id Single Judge and while holding the allotment of vends through draw of lots to be legal, directed for notifying the vends and for inviting of fresh applications. The respondents 1 to 39 being aggrieved by the judgment of the Id D.B filed S.L.P in the Honble Supreme Court, which was converted into Civil Appeal No. 2949/2006 and was disposed of by the Honble Supreme Court along with connected Appeals vide order dated 30th April 2009. The order of the Honble Supreme Court is taken note of;- Civil Appeal No.2949 of 2006 These appeals arise out of a challenge to the

Liquor Policy for the year 2004-05 framed by the State of Jammu & Kashmir. As the liquor vends are operable for a year, we find that no relief can now be granted to the appellants with respect to the policy for the year 2004-05. Mr. L.N.Rao, the learned senior counsel for the appellants has, however, pointed out that some of the observations made by the Division Bench in its judgment dated 21.12.2004 are in favour of the appellants but the grievance of the appellants is with respect to the direction to the Department to initiate action afresh for identification of the locations/areas and notify the same in all leading newspapers of all the liquor vends including the 89 for which selection had been made earlier. He also informs us that a writ petition being Original Writ Petition No.822/2005 challenging the selection made in the year 2005 has been filed and the matter is still pending before the High Court. In the light of what has been observed we find that the observations afore-referred in the judgment of the Division Bench shall be deemed to be confined only for the year 2004-05 and will not affect any allotment for subsequent years. We also give liberty too the parties herein to intervene as parties in the writ petition pending in the J&K High Court. We would also request the High Court to dispose of the matter expeditiously and clarify that it will be open to all parties to raise all issues before the High Court. Mr.T.S.Doabia, the learned senior counsel appearing for the appellants in C.A.No.7295/2008 has invited our attention to Annexure P-3, a Government Order dated 22.07.2003 in which some exceptions have been carved out with reference to the liquor licences. This question too will be available to the appellants to argue before the High Court. The appeals are disposed of accordingly. I.A.7/2006, application for intervention is allowed. The State Government in pursuance to the judgment of the L.P Bench proceeded with the process afresh and writ petitioners in OWP No. 822/05 were allotted vends/sites and temporary licences were issued. However, show cause notices were issued for cancellation of licences which constrained the appellants to approach this court in writ petition registered as OWP No. 822/05, wherein they prayed for issuance of following reliefs;- i) Writ, order or direction in the nature of Writ of Certiorari quashing and setting aside the impugned show-cause-notices dated 14th December, 2005 issued to the petitioners whereby the temporary licences issued in favour of the petitioners, have been proposed to be cancelled; ii) Writ, order or direction in the nature of Writ of Mandamus commanding upon the

respondents to issue regular licences in favour of the petitioners on completion of the period of their temporary licences in terms of Rule 30(7) of the J&K Liquor Licence and Sales Rules, 1984 as amended vide SRO 5 of 2004 dated 26th Feb., 2004 iii) Writ, order or direction in the nature of Writ of Prohibition restraining the respondents from stopping the operation of retail vends of foreign liquor and Indian Made Foreign Liquor (including Beer) being operated by the petitioners in pursuance of licences issued in their favour by the Respondent No:2 (Annexure-N) till the regular licences in their favour are issued by the Respondent No:2 in terms of Rule 30(7) of the J&K Liquor Licence and Sales Rules, 1984; iv) Any other writ, order or direction which this Honble Court may deem fit and proper in the facts and circumstances of the case may also be issued in favour of the petitioners and against the respondents along with cost. Respondents 1 to 39 filed applications for modification of the order dated 30th April 2009, before the Honble Supreme Court, which applications were dismissed in terms of the order dated 2nd August 2010. The said respondents, on their motion, were impleaded as party respondents in OWP No. 822/05. As already stated, Id sr. counsel for the respondents raised preliminary objection about maintainability of L.P.A on the ground that the impugned order does not constitute judgment in terms of Clause 12 of the Letters Patent. Id Sr. counsel strenuously argued that the Honble Supreme court in terms of order dated 30th April 2009, had directed for impleadment of the respondents 1 to 39 as party respondents in OWP No. 822/05, the writ court had no option but to carry out the order of the Honble Supreme court by impleading them as party respondents in the aforementioned writ petition. Id Sr. counsel also submitted that the issue involved in OWP No. 822/05 has direct bearing on the rights of the respondents 1 to 39 who constitute a class in themselves for the reason that they were selected through draw of lots for allotment of liquor vends and for issuance of licences, which have been allotted to appellants. Id sr. counsel further submitted that 89 vends were clubbed with other 116 vends, which were subsequently again advertised and appellants were selected for allotment of vends and for grant of licences to run the liquor vends, as such the legal interest of the respondents 1 to 39 are in direct conflict with the appellants who have sought relief of quashing of not only show cause notices but also for grant of regular licences in their favour, in terms of Rule 30(7) of J&K Liquor Licence and Sales Rules, 1984 amended vide

SRO 58/2004 dated 26th Feb. 2004. Ld Sr. Counsel in support of their contention besides referring to clause 12 of Letters Patent also referred to D.B judgment of this court in case Karam Singh v. State of J&K and others reported in AIR 197.JK 2.and decision of the Honble Supreme Court in case titled P.S Satappan (dead) by LRs appellant v. Andhra Bank Ltd and ors reported in (2004) 11 SCC 672.case titled Shah Babulal Khimji, appellant v. Jayabeen D. Kania and anr, respondents reported in (1981) 4 SCC 8 and case titled Maruti Rama Naik, appellant v. State of Maharashtra, respondent reported in (2003) 10 SCC 67.and submitted that the appeal deserves to be dismissed. Ld Sr. counsel for the appellants submitted that the LPA is maintainable, inasmuch as, the order impugned satisfies the test of judgment. Ld sr. counsel submitted that respondents 1 to 39 have no direct interest in the subject matter of the OWP No. 822/05 in which they have been ordered to be impleaded party respondents, as in pursuance to the judgment of the Letters Patent Bench, fresh process was initiated by official respondents which resulted in allotment of vends and issuance of temporary licences in favour of the appellant(s). Ld sr. counsel further submitted that show cause notices were issued for cancellation of licences which constrained the appellants to approach this court by filing OWP No. 822/05. Ld sr. counsel submitted that in case respondents 1 to 39 are permitted to be impleaded as party respondents then the court will have to literally decide a triangular contest, one between appellants and official respondents, official respondents and the impleaded party and between appellants and impleaded party. Ld sr. counsel while elaborating his submissions submitted that the issues raised in the writ petition in no way effect any of the vested legal rights of the respondents 1 to 39 impleaded parties and their impleadment as such is illegal. Ld counsel also submitted that the Honble Supreme Court vide its order dated 30th April 2009, has not directed for impleadment of the respondents 1 to 39 as party respondents in OWP No. 822/05 as is the view taken by the writ court. Ld sr. counsel submitted that writ court was duty bound to consider the applications of respondents 1 to 39 on their merits. Ld sr. counsel submitted that without considering the applications on their own merit they have been ordered to be impleaded as party respondents by misinterpreting the order of the Honble Supreme court. Ld sr. counsel also invited the attention of the court to an application filed by respondents 1 to 39 before the Honble Supreme Court wherein

they sought modification of the order dated 30th April 2009 and in which applications they specifically stated that the subject matter of OWP No. 822/05 has nothing to do with the claim of the petitioners with regard to 89 vends. These applications seeking modification of the order are dismissed by the Honble Supreme Court vide order dated 2nd August 2010. Ld sr. counsel accordingly submitted that the appeal be allowed and the impugned order be set- aside. In order to appreciate the objections raised in respect of the maintainability of the LPA, it is deemed appropriate to take notice of the Clause 12 of the Letters Patent, Section 104 and Order XLIII of the CPC and Order 1 Rule 10 CPC, paragraphs 5 & 6 of Karam Singhs case, paragraphs 2,3 and 4 of the Division Bench Judgment of this court in case titled Pawan Kumar v. Narinder Kumar Jain reported in AIR 200.JK 29.paragraphs 28, 78,79,107,108,110,111,113,115and 120 of Shah Babul lal Khem Jis case. Clause 12 of Letters Patent 12. And we do further ordain that an appeal shall lie to the said High Court of judicature from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made 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) of one judge of the said High Court or one judge of any Division Court and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, a consistently with the provisions of the civil procedure code, made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court where the judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgment of the judges of the said High Court or of such division court shall be to us, out Heirs or Successors and be heard by our Board of Judicial Advisers for report to us. Section 104 and order XLIII of CPC and Order 1 Rule 10 CPC Section 104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:- 1[***] 2[(ff) an order under section 35A;] 3[(ffa) an order under section 91 or section 92

refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;] (g) an order under section 95; (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree; (i) any order made under rules from which an appeal is expressly allowed by rules; 2[Provided that not appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.] (2) No appeal shall lie from any order passed in appeal under this section.

Order-43 1. Appeals from orders An appeal shall lie from the following orders under the provisions of Section 104, namely;- (a) an order under rule 10 of the Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in rule 10-A of Order VII has been followed]; 2(b) ***]; (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit. (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed exparte; 2[(e) ***]; (f) an order under rule 21 of Order XI; 2(g) ***]; 2(h)***]; (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement; (ii) an order under sub-rule (2), rule 11 of Order XX passed without the consent of the parties; (J) an order under rule 72 or rule 92 of order XXI setting aside of refusing to set aside a sale; 1[(j-a) an order rejecting an application made under sub-rule (1) of rule 106 of order XXI provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable;] 1[(jj) and order passed by any Court other than the High Court under Order XXI (A) in the exercise of insolvency jurisdiction]; (K) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit; (1) an order under rule 10 of Order XXII giving or refusing to given leave; 2(m) Omitted; (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit; 1[(n-a) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent personal; 2[(0) Omitted; (00) an order under rule 5 of Order XXXIII rejecting an application for permission to sue as a pauper; (p) orders in inter-pleader suits under rule 3, rule 4 or rule 6 of Order XXXV; (q) an order under rule 2, rule 3 or

rule 6 of Order XXXVIII; (r) an order under rule 1, rule 2, rule 2 (a) rule 4 or rule 10 of Order XXXIX; (s) an order under rule 1 or rule 4 of Order XL; (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 31 of Order XLI to rehear, an appeal; (u) an order under rule 23 or rule 23-A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court; (v) Omitted; (w) an order under rule 4 of Order XLVII granting an application for review. Order 1 Rule 10 Suit in name of wrong plaintiff (1) Where a suit has been instituted in the name of the wrong persons as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just. (2) Court may strike out or add parties. The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent. (4) Where defendant added, plaint to be amended Where a defendant is added, the plaint, shall unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

5. Subject to the provisions of the Limitation Act, Section 22 , the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons. Paragraphs 5 and 6 of Karam Singhs case 5. In the present case the petitioners had a right to oppose and defeat the claim of Mahesh Dass Sethi for being impleaded as a party to the writ petition. The order of the learned Single Judge operates to determine that right against them. But the determination is not final against them in the sense that if the decision in the main

writ petition turns against them, they will have a right to challenge the decision also on the ground that the order of the learned single Judge impleading Mahesh Dass Sethi as a party was improper. In this view the order does not finally determine the right of the petitioners to oppose and defeat the claim of Mahesh Dass Sethi to be impleaded as a party. Therefore, on the general principle mentioned above, it does not amount to judgment under clause 12 of the Letters Patent and no appeal can lie against it. The position could not be same if the application of Mahesh Dass Sethi had been rejected. In that case the appeal could be competent at his instance, because once his application was rejected, he could not re-agitate the matter and press his claim at any subsequent stage of the writ petition. The learned counsel could not perhaps appreciate this distinction inasmuch as it was argued by him that appeals have been admitted by the court where the application for impleading a person as a party to a suit or cause was rejected.

6. The impugned order does not also fall within the category of orders contemplated in the decision as amounting to judgment. Because the order is analogous to one made under Order 1, Rule 10 C.P.C, which is not appealable under the Code of Civil Procedure. Viewed from this angle too the order is not appealable. Paragraphs 2,3 and 4 of D.B Judgment titled Pawan Kumar v. Narinder Kumar Jain reported in AIR 200.JK 2.Paragraph-2 02.

2. A plain reading of clause 12 makes it manifestly clear that an appeal is competent from the decision of a Single bench provided such decision falls within the ambit of judgment. Therefore, a moot question arises as to whether an order of impleadment amounts to a judgment. The contention of the learned counsel for the appellants is that it does. He has placed reliance on Shah Babulal Khimji v Jayaben Kania and another (AIR 198.SC 1786). In its para 120, illustrations of orders are given which may be treated as judgments but these illustrations do not include an order of impleadment of the legal heirs. Thus it needs to be determined whether an order of impleadment can be said to be a judgment. In this behalf it is appropriate to notice the observations of the apex court in paras 106 and 119 of the judgment supra, which are reproduced hereunder: "106. Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to

be a judgment within the meaning of the Letters Patent.

119. 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 due 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 injustice. (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 questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings." Paragraph-3 03. Analysing the aforementioned guidelines, it emerges that: (a) an order which contains the traits and trappings of finality and affects the rights of a party amounts to judgment within the meaning of clause 12 of Letters Patent; (b) a discretionary order has to be presumed to be correct unless it is ex facie erroneous or causes grave and substantial injustice. Paragraph-04 4. The learned counsel for the appellants has vehemently contended that the legal heirs of Shadilal have no right whatsoever to claim the proprietary rights over the suit property because same was bequeathed to the appellants by the deceased defendant during his life time. To appreciate the contention it needs to be borne in mind that fall out of the order impugned in essence facilitates the final adjudication of the controversy involved in the suit. Whether property has been bequeathed to the appellants is an issue which is to be gone into. If such stand is available to the appellants nothing prevents them to press it into service, for, the impleadment does not debar them to urge such contention in opposition to the claim. The rights and liabilities of the parties with respect to the suit property are yet to be determined, obviously, the impleadment does not affect the merits of the controversy involved in the suit. As a matter of fact, ample opportunity is available to the appellants to contest the claim

of the legal heirs. Thus we hold that an order of impleadment does not amount to judgment within the meaning of clause 12 of the Letters Patent. However, we may hasten to add that cases are conceivable where serious injustice may cause to a party by allowing the application for impleadment. Take the instance of an application which is barred by limitation. By allowing such application, grave and substantial injustice is likely to cause to a party, therefore, unless delay is condonable under law and is codoned, the application has to be rejected. Suffice it to say that admittedly the application in the case in hand was not barred by limitation, therefore, the order impugned no way works injustice to the appellants. Viewed thus, the learned Single Judge was quite justified to pass the order impugned. Same being sound in law, we are loath to display interference. . Paragraphs 28, 78,79,107,108,110,111,113,115and 120 of Shah Babul lal Jis case. Paragraph-28 28. We find ourselves in complete agreement with the arguments of Mr. Sorabjee that in the instant case s. 104 read with Order 43 Rule 1 does not in any way abridge, interfere with or curb the powers conferred on the Trial Judge by cl. 15 of the Letters Patent. What s. 104 read with order 43 Rule 1 does is merely to give an additional remedy by way of an appeal from the orders of the Trial Judge to a larger Bench. Indeed, if this is the position then the contention of the respondent that s. 104 will not apply to internal appeals in the High Courts cannot be countenanced. In fact, the question of application of the Code of Civil Procedure to internal appeals in the High Court does not arise at all because the Code of Civil Procedure merely provides for a forum and if order 43 Rule 1 applies to a Trial Judge then the forum created by the Code would certainly include a forum within the High Court to which appeals against the judgment of a Trial Judge would lie. It is obvious that when the Code contemplates appeals against orders passed under various clauses of order 43 Rule 1 by a Trial Judge, such an appeal can lie to a larger Bench of the High Court and not to any court subordinate to the High Court. Hence, the argument that order 43 Rule 1 cannot apply to internal appeals in the High Court does not appeal to us although the argument has found favour with some of the High Courts. Paragraph-78 78. Thus after considering the arguments of counsel for the parties on the first two limbs of the questions, our conclusions are :- (1) That there is no inconsistency between s. 104 read with order 43 Rule I and the appeals under the Letters Patent and there is nothing to

show that the Letters Patent in any way excludes or overrides the application of s. 104 read with order 43 Rule I or to show that these provisions would not apply to internal appeals within the High Court. (2) That even if it be assumed that order 43 Rule I does not apply to Letters Patent appeals, the principles governing these provisions would apply by process of analogy. (3) That having regard to the nature of the orders contemplated in the various clauses of order 43 Rule 1, there can be no doubt that these orders purport to decide valuable rights of the parties in ancillary proceedings even though the suit is kept alive and that these orders do possess the attributes or character of finality so as to be judgments within the meaning of cl. 15 of the Letters Patent and hence. appealable to a larger Bench. (4) The concept of the Letters Patent governing only the internal appeals in the High Courts and the Code of Civil Procedure having no application to such appeals is based on a serious misconception of the legal position. This now brings us to the second important point which is involved in this appeal. Despite our finding that s. 104 read with order 43 Rule I applies to Letters Patent appeals and all orders passed by a Trial Judge under clauses (a) to (w) would be appealable to the Division Bench, there would still be a large number of orders passed by a Trial Judge which may not be covered by order 43 Rule I. The next question that arises is under what circumstances orders passed by a Trial Judge not covered by order 43 Rule 1 would be appealable to a Division Bench. In such cases, the import, definition and the meaning of the word 'judgment' appearing in cl. 15 assumes a real significance and a new complexion because the term 'judgment' appearing in the Letters Patent does not exclude orders not falling under the various clauses of order 43 Rule 1. Thus the serious question to be decided in this case and which is indeed a highly vexed and controversial one is as to what is the real concept and purport of the word 'judgment' used in cl. 15 of the Letters Patent. The meaning of the word 'judgment' has been the subject matter of conflicting decisions of the various High Courts raging for almost a century and in spite of such length of time, unfortunately, no unanimity has so far been reached. As held by us earlier it is high time that we should now settle this controversy once for all as far as possible.

Paragraph-107 107. The last case of this Court to which our attention has been drawn is *Shanti Kumar R. Canji v. The Home Insurance Co. Of New York* where the court was considering the effect of an order passed by the Trial Judge allowing

amendment of the plaint and the question at issue was whether such an order would be a judgment within the meaning of the Letters Patent. The following observations were made by this Court in the aforesaid case. "We are in agreement with the view expressed by the High Court at Calcutta in the M.B. Sirkar's case (AIR 195.Cal.

630) as to when an order on an application for amendment can become a judgment within the meaning of clause 15 of the Letters Patent. If an amendment merely allows the plaintiff to state a new cause of action or to ask a new relief or to include a new ground of relief all that happens is that it is possible for the plaintiff to raise further contentions in the suit, but it is not decided whether the contentions are right. Such an amendment does nothing more than regulate the procedure applicable to the suit. It does not decide any question which touches the merits of the controversy between the parties. Where, on the other hand, an amendment takes away from the defendant the defence of immunity from any liability by reason of limitation, it is a judgment within the meaning of clause 15 of the Letters Patent. The reason why it becomes a judgment is that it is a decision affecting the merits of the question between the parties by determining the right or liability based on limitation. It is the final decision as far as the trial court is concerned. In finding out whether the order is a judgment within the meaning of clause 15 of the Letters Patent it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the court. The nature of the order will have to be examined in order to ascertain whether there has been a determination of any right or liability". (Emphasis ours) Thus, having noticed the ratio of some of the cases of this Court referred to above, regarding the tests to determine the import and meaning of the word 'judgment' we now proceed to deal with the specific question after interpreting cl.15 of the Letters Patent of the Bombay High Court and the corresponding clauses of Letters Patent of other High Courts. We shall endeavour to interpret the connotation and the import of the word 'judgment' particularly in the light of pertinent and pointed observations made by this Court on earlier occasions as discussed above. The relevant portion of cl. 15 of the Letters Patent may be extracted thus :- "We do further ordain that an appeal shall lie to the said High Court of Judicature at Madras, Bombay, Fort William in Bengal from the judgment..

..... of one Judge of the said High Court.. " Paragraph-110 In Mt. Shahzadi Begam v. Alak Nath and Ors., Sulaiman, C.J., very rightly pointed out that as the Letters Patent were drafted long before even 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 Chief Justice observed as follows :- "It has been held 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 same time the word 'judgment' does not include every possible order, final, preliminary or interlocutory passed by a Judge of the High Court". Paragraph-111 111. We find ourselves in complete agreement with the observations made by the Allahabad High Court on this aspect of the matter. Paragraph-113 113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-s. (2) of s. 2 cannot be physically imported into the definition of the word 'judgment' as used in cl. 15 of the Letters Patent because the Letters Patent has advisedly not used the terms 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a Trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds :. (1) A Final Judgment-A judgment which decides all the questions or issues in controversy so far as the Trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed

in part or in full. Such an order passed by the Trial Judge indisputably and unquestionably is a judgment within the meaning of the Letters Patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench (2) A preliminary judgment-This kind of a judgment may take two forms-(a) where the Trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the Trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (b) Another shape which a preliminary judgment may take is that where the Trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of the suit, e.g., bar of jurisdiction, res Judicata, a manifest defect in the suit, absence of notice under section 80 and the like, and these objections are decided by the Trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the Trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an R order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to larger Bench. (3) Intermediary or Interlocutory judgment-Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by o. 43 R.1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the Trial Judge in a suit under order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy

is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an Order passed by the Trial Judge would not amount to a judgment within the meaning of cl. 15 of the Letters Patent but will be purely an interlocutory order. Similarly, suppose the Trial Judge passes an Order setting aside an ex- parte decree against the defendant, which is not appealable under any of the clauses of O. 43 R.1 though an order rejecting an application to set aside the decree passed ex parte falls within O. 43 R.1 cl. (d) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the ex- parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the Trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench. Paragrap

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. Paragraph-120 120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the Trial Judge amounts to a judgment within the

meaning of the Letters Patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments: (1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant (2) An order rejecting the plaint. (3) An order refusing leave to defend the suit in an action under Order 37, Code of Civil Procedure. (4) An order rescinding leave of the Trial Judge granted by him under clause 12 of the Letters Patent. (5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under s. 80, bar against competency of the suit against the defendant even though the suit is kept alive. (6) An order rejecting an application for a judgment on admission under order 12 Rule 6. (7) An order refusing to add necessary parties in a suit under s. 92 of the Code of Civil Procedure. (8) An order varying or amending a decree. (9) An order refusing leave to sue in forma pauperis. (10) An order granting review. (11) An order allowing withdrawal of the suit with liberty to file a fresh one. (12) An order holding that the defendants are not agriculturists within the meaning of the special law. (13) An order staying or refusing to stay a suit under s. 10 of the Code of Civil Procedure. (14) An order granting or refusing to stay execution of the decree. (15) An order deciding payment of court fees against the plaintiff. Maruti Rama Naiks case does not deal with the controversy as the issue deals with the criminal case. Similarly P.S Sathappan case does not specifically deal with the issues raised in this appeal, as in that case the issue involved was about the exclusion of the applicability of the LPA in terms of Section 104 (2). Which order constitute judgment in terms of clause 12 of the Letters Patent and which order would not constitute a judgment in terms of the said clause of the Letters Patent will always remain open for consideration. Neither the laws are static and lifeless nor the judicial process of deciding the matters and interpreting the laws can be said to have come to full circle and its evolution completed. The process of evolution in human life is continuous and un-abated process. Similarly all that which concern human affairs cannot be said to have reached to culmination point. In the civilized society affairs of human being are regulated by laws made by the law making bodies which are created by the people themselves. The process of thinking and interpretation is a

continuous and ceaseless process. It is the continuous process of thinking and learning that has made the cave man to reach to this pass of life. Human history would reveal that no activity which comes within the human sphere has reached its saturation point. In the like manner the legal jurisprudence through evolutionary process has touched mile stone after mile stone, but has not reached to a dead end. Thinking process and process of interpretation at particular point of time is influenced by all that exists around a human being at that particular point of time. In the legal jurisprudence certain legal and jurisprudential concepts evolved at one particular point of time, hold the fort for long period and such decisions are to be followed and respected until need arises to have re-look on the issue decided and principle evolved. It is in the afore-stated back drop, decision of the court in Kamran Singhs case shall have to be taken into consideration. The impleadment of person as party respondent in a writ petition was held to be not a judgment within the meaning of Clause 12 of the Letters Patent and accordingly, it was held that the LPA would not be maintainable against an order directing the impleadment of a person as party respondent in the writ petition. The decision which has been authored by the Honble Mr. Justice Mufti Bahu-ud-din, as he then was, in paragraph-5 has observed that the appellants have right to oppose and defeat the claim of applicant Mahesh Dass Sethi for being impleaded as a party respondent. It was further observed in the same paragraph that impleadment of a person as party in the writ petition would not constitute a final determination against the opposite party on the premise that if the decision in the writ petition goes against the person who opposes the impleadment then he can challenge the same also on the ground that the order of Id single judge for impleadment of a person as a party was improper. It is for this reason it was held that the order of allowing impleadment application does not finally determine right of the opposite party and consequently the said order would not constitute a judgment in terms of clause 12 of Letters Patent. The Letters Patent Bench further at paragraph-6 observed, since the order of impleadment does not fall within the category of orders contemplating to be judgment on the ground that same is analogous to one made under Order 1, Rule 10 C.P.C which is not appealable under the Code of Civil Procedure. For allowing an application for impleadment, prima facie finding has to be recorded that a person who is seeking impleadment is necessary and

proper party for the disposal of the case. For determining as to whether the person is necessary party, it has to be appreciated that the controversy raised in the case and ultimate judgment may affect him adversely and that the issue raised in the proceedings may not be completely and finally adjudicated upon in his absence. A person whose rights would be affected in the proceedings has substantial interest in the litigation and if he makes an application for impleadment, the court has to implead him as party respondent in the writ petition. By impleading such person as a party respondent in the writ petition, the court would be only facilitating adjudication of the issues fully and completely, and further would ensure that no prejudice is caused to such a person by the judgment of the court. The court is not finally deciding anything but is facilitating culmination of the proceedings in just and lawful manner. Such order of impleadment may not in all circumstances constitute a judgment in terms of Clause 12 of Letters patent and L.P.A may not be competent in such circumstances. But assume a situation that a busy body without having any interest in the subject matter of the proceedings pending on the files of the court of law files an application for impleadment, where none of his rights would be affected, if such a person is ordered to be impleaded as party respondents, the valuable right of the person at whose instance, the proceedings were initiated would suffer an irreparable injury and prejudice would be caused to him, as the proceedings of the case would get high-jacked and his rights may get ultimately defeated which would work serious injustice to him. A party who initiates proceedings before the Court of law has valuable right vested in him to get the case decided expeditiously in hassle free manner. In aforementioned circumstances, the order of impleadment would constitute a judgment in terms of Clause 12 of Letters Patent and L.P.A would be maintainable. Take another example, by impleadment of a person as party respondent, the subject matter of the lis may get completely changed which in turn would cause prejudice and defeat the legal rights of the suitor. In such circumstances also the order impleading such person as party would constitute judgment within the meaning of Clause 12 of the L.P and L.P.A will be maintainable. These are few instances which are only illustrative and not exhaustive. Thus, it cannot be finally stated as to which of the orders passed in the proceedings would have attributes and trappings of final order which would make it amenable to Letters Patent jurisdiction of the

court. The Honble Supreme Court at paragraph 78(3) in Shah Babulal Khimjis case has observed that most of the interlocutory orders which contain the quality of finality are clearly specified in Clause (a) to (w) of Order 43 Rule 1 and were held to be judgment for the purpose of Clause 12 of L.P. The Honble Supreme Court, however, hasten to add that there may also be interlocutory orders which are not covered by O 4.R 1 but which also possess the characteristics and trapping of finality and that orders may adversely affect the valuable right of party or decide an important aspect of the trial in ancillary proceedings. (emphasis supplied) The Honble Supreme Court also stated in paragraph-113 sub para-3, that an order setting aside the ex-parte decree, which is not appealable under an O 4.R 1 puts the defendant to a great advantage and works serious injustice to the plaintiff. It was held in such circumstances the order passed by the trial judge for setting aside the ex-parte decree vitally effects the valuable rights of the plaintiff and amounts an interlocutory judgment and is appealable to a Larger Bench. In paragraph-115 of the Shah Babullal Khimjis case the Honble S.C further held that though, every interlocutory order cannot be regarded as judgment and only those orders would be judgments which decide the matters of moment or affect vital and valuable rights of the parties and which works serious injustice to the party concerned. (emphasis supplied) At paragraph-78 of the Shah Babullal Khimjis case the Honble S.C has specifically concluded that the nature of the orders contemplated in the various Clauses of O 4.R 1 constitute judgments within the meaning of Letters Patent and hence appeal to the Larger Bench. At paragraph-107 of the same judgment the court referred to the earlier judgment reported in AIR 197.SC 171.Shanti Kumar R. Canji v. The Home Insurance Company of New York, where it has been held that to find out whether order is an judgment within the meaning of Clause 15 of L.P, it has to be find out that the order affects the merits of action between the parties by determining some right or liability. The nature of order will have to be examined in order to ascertain whether there has been determination of any right or liability. (emphasis supplied.) The reasoning on which Karam Singhs case of this court has turned has been succinctly dealt with and answered by the Honble S.C in Shah Babullal Khimjis case. In view of the law laid down by the Honble S.C in the Shah Babulal Khimjis case, the reasoning given in Karam Singhs case by this court has lost its effect and its legal sheen has

been taken away rendering it not to be a precedent to be followed. In view of the mandate contained in Art. 141 of the Constitution of India, it is the law laid down by the Honble S.C which is binding and which has to be followed by all, including this court. This court in Pawan Kumars case, which judgment is authored by Honble Mr. Justice N.A. Kakru, as he then was, has in paragraph-4 held that the order impleading legal heirs as respondents does not constitute the judgment within the meaning of Clause 12 of the L.P. The Honble D.B, however, proceeded to observe that cases are conceivable where serious injustice may be caused to a party by allowing the application for impleadment. For illustration L.P Bench of this court referred to application which is barred by limitation. In the facts of that case, legal heirs of respondent were ordered to be impleaded as defendants, which impleadment was opposed by the appellants in the said case on the ground that the suit property was bequeathed to the appellants by the deceased therein during his life time. The Honble Court in the said case observed that the impleadment would facilitate the final adjudication of the controversy involved in the suit and the issue of bequeathing the property would require to be ascertained and decided. The observation made by L.P. Bench do support the reasoning recorded hereinabove that there can be instances in which grave and substantial in-justice would be caused to the parties, thus, in the said judgment it has not been held as a matter of principle of law that L.P.A under Clause 12 would not be maintainable in all circumstances against an order of impleadment. The appellants at paragraph-4 to 12 of writ petition have referred to the facts and events which ultimately culminated in issuance of temporary licences in their favour. The appellants have in the aforementioned paragraphs referred to the decision of the official respondents to settle the allotment of vends and issuance of licences through draw of lots. The appellants- writ petitioners earlier had not applied for allotment of vends and issuance of licences. However, it is in this process, the respondents 1 to 39 were selected by process of draw of lots for allotment of liquor vends and issuance of liquor licence for dealing with the liquor in retail, which process was called in question before the writ court which quashed the process of allotment of vends through draw of lots, which judgment was ultimately set aside by the D.B judgment of this court. The courts are duty bound to consider and decide issues involved in a case and amongst the parties. Different parties raise

different issues which are to be settled by the court. In view of the pleadings of the writ petition itself and in the interest of justice and for ensuring that there is no multiplicity of litigation, the respondents 1 to 39 would require to be given opportunity of hearing more particularly for the reasons that the appellants at paragraph-9 of the writ petition have specifically pleaded that in terms of notice dated 25th June 2005, applications were invited from eligible persons desirous of obtaining of liquor licence in the form of JKEL-2 for Retail vending of IMFL with respect to 90 locations and out of these 90 locations 36 locations were advertised conditionally for the reason that these locations coincided with the locations which were advertised during the previous years and with regard to which the matter was subjudice before the Honble Supreme Court. The legal interest of respondents 1 to 39 is, thus, writ large on the pleadings of the writ petition itself. They are to be permitted to intervene in the writ petition as parties so as to enable them to assist the court and defend their legal interest. The issues raised in the writ petition by the appellants have to be settled in their entirety , and for this purpose respondents 1 to 39 cannot be said to strangers but do have substantial legal interest in the final adjudication of the writ petition. The Honble S.C in its order dated 30th April 2009 while giving opportunity to respondents 1 to 39 to intervene as a parties in the writ petition OWP No. 822/05 also provided that it would be open to all parties to raise all the issues before High Court. The Honble S.C also while referring to the submissions of the Id sr. counsel for the appellants who invited attention of the court to order dated 22nd July 2003, observed that this question too will be available to the appellants (respondents to 1 to 39 herein) to argue before the High Court. A cumulative effect of the order of Honble S.C dated 30th April 2009 is that respondents 1 to 39 have been permitted to intervene as parties in the writ petition and further permitted to raise all the issues before the writ court. The dismissal of application seeking modification of order dated 30th April 2009 is inconsequential, having not been decided on merits. For our above recorded reasons we hold that the contention of the Id sr. counsel for the respondents about the maintainability of this appeal is not tenable in view of the law laid down by the Honble S.C in case Shah Babulal Khimjis case, we for the reasons recorded in this order further hold that the appeal is meritless and is accordingly dismissed. The writ court is requested to dispose of the writ petition

expeditiously in view of the observations of the Honble Supreme Court made in order dated 30th April 2009. (Muzaffar Hussain Attar) (Virender Singh) Judge Judge 12 .11.2012 Ayaz

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