

Date of decision: 14.07.2008

Kh. Ali Mohd. ***Vs.*** ***Chief Secretary to Govt.
& Ors.***

MR. JUSTICE J. P. SINGH, JUDGE.

For Respondent(s) : Mr. S.C.Gupta, AAG.

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| i) | Whether approved for reporting
in Press/Journal/Media | : Yes |
| ii) | Whether to be reported
in Digest/Journal | : Yes |

Finality attached to concluded judgments and orders emanates from three maxims:-

1. *Nemo debet lis vexari pro una et eadem*

i.e. no man may be vexed twice for the same cause.

2. *Interest reipublicae ut sit finis litium*

i.e. it is in the interest of the state that
there should be an end to litigation, and

3. ***Res judicata pro veritate occipitur*** i.e. a

judicial decision must be accepted as correct.

Whereas the first maxim is based on private interest, the other two protect the public policy and larger interest of the society.

Thus, founded on justice, equity and good conscience, this cardinal principle of jurisprudence, attaching **Finality** to concluded judgments and orders, may not permit re-adjudication of an already adjudicated lis.

This principle does not appear to have been adhered to by learned Sub-Judge, Ramban, in taking a view other than the one which had been taken by the Appellate Court in its decision on appeal, which had attained finality, as the parties had opted not to prefer any appeal, revision or other proceedings to question the order before any superior Forum.

Courts and Tribunals should therefore keep in mind, that judgments and orders which have attained finality, may not permit them to take views other than the one taken in the concluded judgments or orders, particularly during the currency of the same lis, unless of course, the law, specifically permits such a course.

With this prelude, I proceed to take up appellant's this Civil Second Appeal preferred against Additional District Judge, Ramban's order of January 23, 2006, holding appellant's appeal against Sub-Judge, Ramban's judgment and decree of September 30, 2003, dismissing his suit, as "incompetent".

Admitted to hearing, this appeal raises following substantial questions of law :-

- i) Whether the decree of dismissal of suit passed by the trial Court was appealable under Section 96 of the Code of Civil Procedure?
- ii) Whether the Ist Appellate Court has erred in holding the appellant's appeal not maintainable?

Learned counsel for the parties have been heard on the appeal.

Learned Additional District Judge, Ramban has dismissed appellant's appeal as incompetent, tracing the dismissal of appellant's suit to be one under Order XIV Rule 2(2) of the Code of Civil Procedure Svt. 1977, hereinafter to be referred as the "Code".

Order XIV of the Code contemplates only framing of issues for the purposes of pronouncement of Judgment, on some or all the issues at a later occasion.

Decision on some or all the issues and delivery of final judgment, in a suit is, however, governed by other provisions of the Code which may be found *inter alia* under Orders, XV, XVI, XVII and XX of the Code.

I, therefore, do not find any justification in learned Additional District Judge, Ramban's tracing the power of the Court to dismiss appellant's suit as one under Order 14 Rule 2(2) of the Code in finding out as to whether appellant's appeal was sustainable.

His finding that as the order passed by Sub-Judge, Ramban had been passed under Order 14 of the Code against which no appeal was contemplated under Order 43 Rule 1 of the Code is thus clearly erroneous.

To determine the question regarding the maintainability of the appeal, the Ist Appellate Court was required to view the complexion of

learned Sub-Judge's order dismissing appellant's suit as not maintainable, in the light of the provisions of Section 2(2) of the Code, which for facility of reference is reproduced hereunder:-

“2(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.”

Definition of “decree”, appearing in Section 2 of the Code, includes even the order of rejection of a plaint under Order VII Rule 11 of the Code, when the plaint may not disclose a cause of action, or was one, which from the statement in the plaint, appeared to be barred by any law for the time being in force, or for failure of payment of Court Fee etc.

Dismissal of appellant's suit by learned Sub-Judge, Ramban after passing of a preliminary

decree and during the course of proceedings slated for consideration of passing final decree, would therefore certainly fall within the definition of “decree” in terms of Section 2(2) of the Code because, the controversy raised by the appellant in his suit stood conclusively determined by learned Sub-Judge, Ramban, who had dismissed his suit as “not maintainable”.

Dismissal of appellant’s suit, being a decree in terms of Section 2(2) of the Code was, therefore, appealable as a decree under Section 96 of the Code which provides statutory right of appeal from every decree passed by a Court exercising original jurisdiction, to the appellate Forum.

Provisions of Order XLIII of the Code had, therefore, no application to appellant’s appeal which had been preferred against the dismissal of his suit.

Learned Additional District Judge, Ramban has thus erred in looking to the provisions of Order XLIII Rule 1 of the Code for finding out as to whether or not the judgment under appeal before him was appealable.

I would, therefore, answer the questions framed in this appeal by saying that the Ist Appellate Court has erred in holding appellant's appeal as not maintainable because the decree of dismissal of suit passed by the trial Court was appealable under Section 96 of the Code.

Order passed by Learned Additional District Judge, Ramban, therefore, needs to be set aside.

This appeal thus succeeds and is, accordingly, allowed. Order passed by learned Additional District Judge, Ramban on January 23, 2006 dismissing appellant's appeal is set aside and appellant's appeal is ordered to be revived on the file of learned Additional District Judge, Ramban for its consideration on merits, in accordance with law.

Parties through their learned counsel are directed to appear before learned Additional District Judge, Ramban on 11.08.2008.

(J.P.Singh)
Judge

Jammu
14 .07.2008.
Pawan Chopra