

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR
JUDGMENT

Shimnit Utsch India Vs. State of Rajasthan & Ors.
Pvt. Ltd.

D. B. Civil Special Appeal (Writ)
No. 361/2009 in SB Civil Writ Petition
No. 2888/2009 under Section 18 of
the Rajasthan High Court Ordinance
read with Rule 134 of Rajasthan
High Court Rules against the order
dated 30.3.2009 passed by the Learned
Single Judge.

DATE OF JUDGMENT ::: JULY 31 , 2009

PRESENT

HON' BLE MR. R. C. GANDHI , ACTING CHIEF JUSTICE
HON' BLE MR. JUSTICE K. S. CHAUDHARI

Mr. S. M. Mehta Sr. Counsel with
Ms. Naina Saraf for the appellant.

Mr. G. S. Bapna Advocate General .
Mr. Paras Kuhad with)
Mr. Pancham Surana)
Mr. Ajay Kumar Jain) for the respondents

BY THE COURT (Per Hon' ble K. S. Chaudhari , J)

This appeal has been filed against the order dated 24th April , 2009 passed by Learned Single Judge by which he accepted the application of respondent No.4 to be impleaded as a party in the writ petition.

Petitioner filed a writ petition bearing SB Civil Writ Petition No. 2888/2009 challenging the order dated 6.3.2009 whereby the Office of

the Transport Commissioner suspended agreement to supply and provide services for affixing High Security Registration Plates on Motor Vehicles.

Respondent No.4 filed an application for impleading him as a party respondent and alleged that he was one of the participant/bidder in the tender floated by the State of Rajasthan for affixing of High Security Registration Plates on all types of vehicles in the State. He further alleged that since the said tender was not granted to him, but was granted to the appellant, he filed a writ petition bearing SB Civil Writ Petition No.3134/2006 in which he challenged the illegal grant of contract to the appellant. His petition was dismissed vide order dated 12.8.2008 against which he has filed DB Civil Special Appeal No.1387/2008 which is pending before the Division Bench of this Court. In such circumstances, he may be impleaded as a party respondent in the writ petition.

Learned Single Judge after hearing both the parties, allowed the application of respondent No.4 and directed the appellant to implead respondent No.4 as party respondent.

Heard learned counsel for the parties and perused the record.

Learned counsel for respondent No.4 raised preliminary objection regarding

maintainability of special appeal. Mr. Paras Kuhad submitted that the impugned order is not a judgment or final order, hence, this appeal is not maintainable. He placed reliance on AIR 1981 (4) SCC, 8 Shah Babulal Khimji vs. Jayaben D. Kania and anr. This citation does not help to respondent No. 4 as has been observed in para 107 of the judgment which reads as under:

"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."

Further para 113 of the judgment reads as under:

"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 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 Order 43 Rule 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 proceedings."

Learned counsel for the appellant submitted that the judgment of learned Single Judge

includes interlocutory orders/judgments which determine some collateral matter affecting vital rights and obligations of parties and they are appealable. He placed reliance on AIR 2006 SC 2190 *Midnappa Peoples' Co-op. Bank Ltd & ors. vs. Chunilal Nanda & ors.* in which it was held as under:

"Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories: -

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience, or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in section 2(9), CPC and orders enumerated in Order 43 Rule 1 of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and

obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not 'judgments' for purpose of filing appeals provided under the Letters Patent."

Order directing to implead party has finality in regard to collateral matter which affects the vital and valuable rights and obligations of the parties in the light of the aforesaid judgment.

We are of the opinion that order directing to implead parties falls within the purview of interlocutory judgment against which appeal lies.

Maintainability of this appeal may be viewed from another angle also. Rule 134 (1) of the Rajasthan High Court Rules 1952 reads as under: -

"134(1) Appeal to the High Court from Judgment of Judges of the Court: An appeal shall lie to the High Court from the Judgment or a final order (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 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 or in the exercise of criminal Jurisdiction) of one Judge of the High Court"

This rule shows that appeal lies to the High Court not only from the Judgment of one Judge of the High Court, but also from final order of one Judge of the High Court. Order deciding application under Order 1 Rule 10 CPC by Single Judge is certainly a final order against which appeal lies to the Division Bench. Thus, it becomes clear that appeal of the appellant is maintainable against the impugned order.

Learned counsel for the appellant submitted that respondent No.4 has no fair semblance, title or interest in the matter and the learned Single Judge has committed error in impleading respondent No.4 as a party, hence, appeal may be accepted and order dated 24th April, 2009 may be set aside. On the other hand, learned counsel for respondent No.4 submitted that he was one of the bidder in the tender floated by the other respondents and he has already challenged illegal grant of contract to the appellant and thus, Respondent No.4 is a proper party in the writ petition and the learned Single Judge has rightly allowed him to

be impleaded as a party, hence, the appeal may be dismissed.

Learned Single Judge passed impugned order on two counts, firstly respondent questioned the grant of contract in favour of the appellant and he is in a position to shed light on the entire controversy enveloping the grant/suspension of the contract and secondly one Chandra Bihari Sharma, who lodged criminal complaint against the appellant, has been permitted to appear as an intervener. As far second count is concerned, order allowing Chandra Bihari to appear as an intervener has been set aside by this Division Bench. As far first count is concerned, respondent No.4 filed SB Civil Writ Petition No.3134/2006 challenging illegal grant of contract to the appellant which has also been dismissed by this Court vide judgment dated 12.8.2008 against which Special Appeal is pending. Challenge to Grant of contract is to be decided in DB Civil Special Appeal filed by respondent No.4 and in such circumstances in the present writ petition in which appellant has challenged only the order dated 6.3.2009 whereby Office of Transport Commissioner has suspended agreement to supply and provide services for affixing High Security

Registration Plates on motor vehicles, Respondent No. 4 is not a proper party.

Learned Single Judge placed reliance on (2007) 10 SCC, 82 Sumtibal & ors. vs. Paras Finance Co. Regd. Partnership Firm Beawar (Raj.) through Mankanwar (Smt) W/o Parasmal Chordia (Dead) & ors. and held that law laid down in AIR 2005 (SC) 2813 (Kasturi vs. Iyyamperumal and ors.) is distinguishable. In Kasturi's case (supra) it was held that in a suit for specific performance of contract for sale, stranger claiming independent title and possession over contracted property is neither necessary nor proper party and, therefore, not entitled to join as party defendant in suit. In (1992) 2 Supreme Court Cases, 524 (Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & ors.) lessee of the premises seeking to be impleaded as additional defendant on the ground of being necessary party having material to show that the structures were unauthorised was held to be not a necessary or proper party in a suit relating to property.

Thus, it becomes clear that respondent No. 4 has no fair semblance title or interest in the writ petition as he has already challenged grant of contract to the appellant in another writ petition in which he can shed light on the

illegal grant of contract. This writ petition filed by the appellant only pertains to challenging the order of suspension of agreement in which respondent No.4 has no semblance, title or interest.

Hence, the appeal is accepted and order dated 24April, 2009 passed by the Learned Single Judge is set aside.

(K. S. CHAUDHARI)J

(R. C. GANDHI)ACTG. C. J.

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