IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH
SHILLONG BENCH

SA No. (SH) 1 of 2011

Smti Janeth Nongrum
w/o (L) Riseng Mutyen
Prop. Great World Restaurant
Near Red Cross Hospital
Laban, Shillong-4 : Appellant

-vs-

1. Mrs. Luitmon Dkhar (Kong Lui Dkhar)
D/o (L) Smti Deitymon Dkhar
Umsohsun, Ri-Khasi Press
Shillong.

2. Shri Robert Dkhar
s/o Mrs Luitymon Dkhar
R/o Umsohsun
Opposite Ri-Khasi Press
Shillong : Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Appellant	:	Mr VK Jindal, Sr Adv. Mr S Jindal, Mr S Dey, Mr S Rana, Ms QB Lamare, Advs
For the Respondents	:	Mr D Thabah, Adv
Date of hearing	:	29.11.2011
Date of Judgment & Order	:	02.12.2011

JUDGMENT AND ORDER

This appeal is directed against the judgment dated 4-11-2001 passed by the Learned Judge, District Council Court, Shillong in Title Civil Appeal No. 2 of 2010 affirming the judgment and decree dated 22-3-2010 passed by the Subordinate District Council Court in

Title Suit No. 2 of 2004 decreeing the counter-claim of the respondent. At the outset, Mr. D. Thabah, the learned counsel while entering his appearance on behalf of the respondent, raises preliminary objection on the maintainability of the second appeal. His contention is that as the appeal is one admittedly under Section 8 of the Meghalaya Urban Area Rent Control Act, 1972 ("the Act" for short) directed against the order of the appellate court, no further appeal lies thereafter in view of embargo imposed therein. In support his contention, he relies on the decision of the Apex Court in ***Shyam Sundar Agarwal v. Union of India, (1996) SCC 132*** and the unreported decision this Court in ***RSA No. 1(SH) of 2005 (Gomti Devi Sharma v. Amalendu Dutta Verma)***. On the other hand, it submitted by Mr. V.K. Jindal, the learned senior counsel for the appellant, that the appeal is directed not only against the judgment decreeing the counter-claim but is also directed against the judgment dismissing the suit for declaration, etc. filed under the Specific Reliefs Act, 1963 and, as such, this second appeal lies against the impugned appellate judgment. He maintains that the fact that Section 8 declares that the decision of the appellate court in an eviction proceeding shall be final does not mean that no second appeal will lie against such a decision inasmuch as no express bar against second appeal is engrafted therein. According to the learned senior counsel, the law in this behalf has now been settled by the Division Bench of this Court in ***Ranjit Kr. Dey & others v. Krishna Gopal Agarwal and others, 2004 (2) GLT 435***.

2. The question which requires immediate decision of this Court is, whether second appeal is barred by Section 8 of the Act

against the impugned appellate judgment. Section 8 of the Act reads thus:

> **"8. Appeals. A landlord or a tenant aggrieved by any decision or order of the Court under the provisions of Ss. 4, 5 and 7(2) of this Act shall have a right of appeal against the same as if such decision or order were a decree in a suit for ejectment of the tenant from the house and such appellate Court's decision <u>shall be final</u>.**
>
> (Underlined mine)

There is no dispute at the bar that the proceeding in question has been initiated by the respondent under the provisions of the Act, while the title suit was filed by the by the appellant under the Specific Reliefs Act, 1963. The law is well settled that it cannot be assumed that there is a right of appeal in every matter which comes under the consideration of a court; such right must be given by statute, or by some authority equivalent to a statute such as rules framed under a statute. In other words, a right of appeal is clearly given by statute; it does not exist, whereas a litigant has independently of any statute a right to institute any suit of a civil nature in some or another. No right of appeal can be given except by express words. Section 8 unambiguously imposes a bar against an appeal from the appellate order. This is what is known as "finality clause". The expression "finality clause" has been the subject of various decisions of English and Indian Courts. In *Administrative Law* by H.W.R. Wade and C.F. Forsyth, *9th Edn.*, the expression has been eloquently explained in the following manner: (pp. 713-714)

> *"If a statute says that the decision or order of some administrative body or tribunal "shall be final" or "shall be final or conclusive to all intents and purposes" this is held to mean merely that there is no appeal: judicial review of legality is unimpaired. 'Parliament only gives the impress of finality to the decision of the tribunals on condition that*

they are reached in accordance with law'. This has been the consistent doctrine for three hundred years. It safeguards the whole area of judicial review, including (formerly) error on the face of the record as well as ultra vires. In the leading modern case the Court of Appeal granted certiorari to quash the decision of a medical appeal tribunal which had, by misconstruction of the complex 'paired organ' regulations, miscalculated the rate of disablement benefit payable to a colliery pick sharpener whose one good eye had been injured. The Act provided that the tribunal's decision 'shall be final', but the court would not allow this to impede its normal powers in respect of error of law. In cases where the decision is ultra vires the court may equally grant a declaration.

The normal effect of a finality clause is therefore to prevent any appeal. There is no right of appeal in any case unless it is given by statute. But where there is a general provision for appeal, e.g. from quarter sessions to High Court by case stated, a subsequent Act making the decision of quarter sessions final on some specific matter will prevent an appeal. But in one case the Court of Appeal deprived a finality clause of part even of his modest content, holding that a question which can be resolved by certiorari or declaration can equally well be the subject of a case stated, since this is only a matter of machinery. This does not open the door to appeals generally, but only to appeals by case stated on matters which could equally well be dealt with by certiorari or declaration, i.e. matters subject to judicial review."

3. From the aforesaid opinion of the learned author, which, in my judgment, correctly reflects the legal position, it becomes crystal clear that unless a specific provision of appeal is expressly made by the legislature, there can be no implied right of appeal: no court can impliedly assume the power of appeal. However, I must hasten to add that the finality clause does not exclude the power of judicial review under Articles 136, 226 and 227 of the Constitution. Therefore, the embargo upon appeal created by Section 8 of the Act is against an appeal from the decision of an appellate court. I have carefully gone through the ***Ranjit Kr. Dey (supra***) cited by the learned senior counsel for the appellant, but I cannot persuade myself to hold that this decision is applicable to a second appeal under Section 8 of the

Act. This decision, in my opinion, is only an authority for the proposition that implied exclusion of the remedy of revision is not to be easily inferred and that when the statute does not expressly bar civil revision, very strong circumstances must exist to read any implied prohibition on the exercise of such power. Section 8 of the Act speaks of second appeal from an appellate order and expressly rules out a second appeal as evident from the use of finality clause after first appeal and does not speak about revision. In the view that I have taken, this second appeal is not competent, and is liable to be dismissed.

4. For the reasons stated in the foregoing, this second appeal is hereby dismissed at the very threshold. However, on the facts and in the circumstances of the case, there shall be no order as to costs.

JUDGE

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