

Mahant Dhangir Vs Janki Das

Court: Rajasthan High Court

Date of Decision: Sept. 14, 1989

Acts Referred: Constitution of India, 1950 Article 132, 133, 134, 134A

Citation: (1989) 2 RLW 384 : (1989) 2 WLN 504

Hon'ble Judges: R.S. Verma, J; K.S. Lodha, J

Bench: Division Bench

Judgement

K.S. Lodha, J.

Since these two applications arise out the same judgment, they are being disposed of by a common order. These are two

applications under Articles 133 and 134A of the Constitution praying for a certificate that the case involves a substantial question of law of general

importance and requires decision of the Hon"ble Supreme Court arising out of the decision of this Court in D.B. Civil Special Appeal No. 20/75.

2. We have Heard the learned Counsel for the parties.

3. A preliminary objection has been raised by Mr. M.M. Vyas appearing for Jankidas Mohanlal, the non-petitioners in both these cases. It has

been urged by the learned Counsel for the petitioner that under Article 134A a certificate can be issued by this Court as envisaged in Article

132(1) or 133(1) or 134(1) either of this Court deems it fit on its own motion or if an oral application is made by or on behalf of the party

aggrieved immediately after the passing or making of such judgment, decree, final order or sentence as referred to in the opening part of Article

134A. This Court has not at its own motion deemed it necessary to determine the question whether a certificate of the nature referred to in Clause

(1) or Article 132 or Clause (1) of Article 133 or as the case may be Sub-clause (c) of Clause (i) of Article 134 should be granted or not and,

therefore, the only course for the petitioner to get such a certificate was to make an oral application immediately after the passing of the judgment in

the said special appeal. Since that has not been done, now the petitioners cannot ask for a certificate on the basis of written application filed after

more than one month.

4. In reply, learned Counsel for the petitioners in both the cases that although an oral prayer could have been made for grant of the certificate

immediately after the passing of the judgment, he cannot be precluded from asking for such a certificate even later on by making a written

application for grant of such a certificate and such an application lies under Order 45 of the Code of Civil Procedure. It was also urged that Article

134 of the Limitation Act also envisages a written application, if the only course for asking for such a certificate by a party was to make an oral

application immediately after the delivery of the judgment the provision for limitation for making an application would have been meaningless and

respondent.

5. We have given our consideration to these contentions and in our opinion, the preliminary objection must prevail. It is clear that this Court did not

deem it necessary to determine the question whether a certificate of the nature referred to in the Articles already mentioned above should or should

not be granted and now the certificate is being prayed for by making written application after more than a month of the passing of the judgment and

it is only on that basis that the certificate is prayed for Article 134A has been introduced by the amendment No. 44 of 1978 in the Constitution and

this amendment appears to have been brought in because earlier there were no clear rules when an application for grant of certificate referred to in

Articles 132, 133 and 134 was to be made and different High Courts took different views and made different rules. Therefore, in order to remove

the anomaly. Article 134A had to be introduced by the 44th amendment and now the procedure and the question of limitation has been determined

by providing that an oral application has to be made by or on behalf of the party aggrieved immediately after the passing or making of the

judgment, decree, final order or sentence. No other made by a later application by the parties is provided for. Of course, the court has been given

a discretion to consider this question if it deems necessary suo moto but if the court does not take any step in this respect suo moto, then the only

course open to the parties for making such an application is way of making an oral application immediately after the passing or making of the

judgment, decree, final order or sentence and no written application is either envisaged or entertainable. The provisions of Order 45, CPC or

Article 134 of the Limitation Act would not be of any avail to the petitioner in as much as when a constitutional provision is in conflict with any

other provision of law, the constitutional provision would always prevail. Here when Article 134A has been introduced by the 44th Amendment,

the earlier provisions of Order 45, CPC or Article 134 Limitation Act would not come to the aid of the petitioner. A similar view has been taken

by a Full Bench of the Karnataka High Court in Union of India (UOI) and Others Vs. Ramachandra Sambhaji Kandekar and Others, . Calcutta

High Court also appears to have taken the same view as has been digested in the AIR Manual on Article 134A at page 436, 4th Edition, VIII

Volume in the case reported in (1980) 1 Cal. HEN 235.

6. In this view of the matter, these written applications for grant of the certificates for leave to appeal to the Hon"ble Supreme Court cannot be

entertained and are here by rejected.