

(1996) 12 DEL CK 0030

Delhi High Court

Case No: First Appeal No. 85 of 1994

Basant Kharbanda

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision: Dec. 13, 1996

Acts Referred:

- Delhi High Court Act, 1966 - Section 10

Citation: (1997) 1 AD 398 : (1997) 65 DLT 378 : (1997) 40 DRJ 145

Hon'ble Judges: S.N. Kapoor, J; R.C. Lahoti, J

Bench: Division Bench

Advocate: R.L. Tandon and Satinder Singh, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This appeal is by defendant No.3 in the original suit feeling aggrieved by an order dated 7.1.94 whereby the learned Single Judge has rejected an application under Order 47 Rule 1 of the CPC filed by the appellant seeking review of the order dated 30.8.90 passed in the suit by the learned Judge earlier.

(2) The learned counsel for the plaintiff-respondent has raised an objection to the maintainability of the appeal submitting that the appeal does not lie for two reasons : firstly, Rule 7 of Order 47 of the CPC specifically provides - "an order of the Court rejecting the application shall not be appealable"; secondly, the order does not amount to a 'judgment' within the meaning of Section 10 of the Delhi High Court Act, 1966.

(3) Having heard the learned counsel for the parties, we are of the opinion that the objection raised to the maintainability of the appeal has to be allowed and the appeal dismissed as not maintainable.

(4) It is not disputed that the review was sought for under Order 47 of the CPC. That very order which provides for filing of an application for review and the grounds

therefore, also contains a prohibition on appeal from an order rejecting the application for review. The applicant who invoked the power of the Court conferred by Rule 1 of Order 47 must also suffer the limitation imposed by Rule 7 of the same order i.e. Order 47.

(5) In *Shanker Motiram Nale VS . Shilolsing Gannusing Rajput*, (1994) 2 SCC 753 , an appeal was preferred against an order rejecting an application for review. Their Lordships held :-

"This appeal is obviously incompetent. It is against an order of a Division Bench of the High Court rejecting the application for review of a judgment and decree passed by a learned Single Judge, who seems to have retired in the meantime. It is not against the basic judgment. Order 47 Rule 7 of CPC bars an appeal against the order of the court rejecting the review. On this basis, we reject the appeal."

(6) In [Shah Babulal Khimji Vs. Jayaben D. Kania and Another](#) , their Lordships have held :-

The concept of the Letters Patent governing only the internal appeals in the High Courts and the CPC having no application to such appeals is based on a serious misconception of the legal position.

(7) We may now examine the case from the second view point. Does an order rejecting an application for review amount to a `judgment'? In *Shah Babulal Khimji* (supra) their Lordships have defined the term `judgment' as under :-

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. 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.

7.1 While dealing with intermediary or interlocutory judgment their Lordships have observed (vide para 112) :-

"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."

(8) The test is that to be attained with the quality of judgment an order must decide directly and immediately a valuable right of a party. The impugned order does not determine directly and immediately any valuable right of the appellant. The impugned order merely refuses to interfere with an earlier order. What effects adversely directly and immediately the rights of the appellant is the original order dated 30.8.90 which was sought to be reviewed. The application for review having been dismissed the appropriate remedy of the appellant was to have filed an appeal against the order dated 30.8.90.

(9) So long as the Court rejecting the application for review has jurisdiction to reject the application, its order rejecting the application for review does not affect the rights of the applicant adversely, much less directly and immediately. The effect is indirect or remote merely.

(10) The learned counsel for the appellant relied on a decision of the Supreme Court in Jugal Kishore Paliwal Vs. S. Satjit Singh & Ors., 1984 (7) Drj 30 wherein their Lordships have held that an order rejecting an application for amendment of the written statement was not purely an interlocutory order against which no Lpa would lie. The test laid down by their Lordships in Jugal Kishore Paliwal's case (supra) does not shake the view taken by us hereinabove and rather supports the same. The test laid down by the Supreme Court in Shah Babujilal Khimji's case (supra) has been reiterated and their Lordships have held that the tests to determine whether an interlocutory order would amount to a judgment were (i) whether the order decides matters of moment, (ii) whether it affects the vital and valuable rights of the parties, and (iii) whether it works serious injustice to the parties concerned. Applying the tests to the case at hand, none of the tests is satisfied by an order rejecting an application for review so as to call it a judgment.

(11) For the foregoing reasons, the appeal is dismissed as not maintainable. No order as to the costs.