**(1961) 10 MP CK 0033**

**Madhya Pradesh High Court**

**Case No:** Letters Patent Appeal No. 22 of 1961

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| Punjab Soap Works | | APPELLANT |
| | Vs | |
| Hindusthan Liver Ltd. | | RESPONDENT |

**Date of Decision:** Oct. 31, 1961

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1

**Citation:** AIR 1962 MP 356 : (1962) ILR (MP) 541 : (1962) JLJ 205 : (1962) 7 MPLJ 240 : (1962) MPLJ 240

**Hon'ble Judges:** P.V. Dixit, C.J; K.L. Pandey, J

**Bench:** Division Bench

**Advocate:** R.S. Dabir, for the Appellant; L.G.R. D''Silva and K.K. Dube, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Dixit, C.J.

This is a Letters Patent appeal against an order of Naik )., by which the learned Single Judge dismissed an appeal against an order made by the First Additional District Judge, Jabalpur, granting an ad-interim injunction against the defendant-appellant in a suit filed by the respondent-Company for infringement of its registered trade marks and for passing off the goods of the defendant as those of the plaintiff.

On behalf of the respondent Shri K.K. Dube raised the preliminary objection that the appeal was incompetent as the order of the learned Single Judge was not a ''judgment'' under or within the meaning of Clause 10 of the Letters Patent of this Court. Relying on a Full Bench decision of this Court in Manohar v. Baliram ILR (1952) Nag 471 : (AIR 1952 Nag 357), learned counsel argued that the order in question neither affected the merits of the controversy between the parties in the suit itself, nor did it terminate or dispose of the suit on any around, and consequently it was not a ''judgment'' according to the test laid down in the Full

Bench decision.

In reply Shri Dabir, learned counsel for the appellant, submitted that even according to the majority view expressed in ILR (1952) Nag 471 : (AIR 1952 Nag 357) (FB) (Supra) it was not necessary for the purpose of the appealability under Clause 10, of an order that it should involve the determination of some right or liability in controversy between the parties in the suit itself; and that an order in an independent proceeding in a suit determining the rights and liabilities of the parties for the time being pending the disposal of the suit and terminating that controversy between the parties was a ''judgment'' within the meaning of Clause 10. Learned counsel said that proceedings for the issue of a temporary injunction were independent proceedings as distinguished from proceedings purely ancillary and subsidiary which were no more than a step towards the obtaining of final adjudication in the suit that an order granting or refusing an injunction involved the determination of the rights and liabilities of the parties in regard to the subject-matter of the suit though the determination was for a temporary period till the disposal of the suit; that the determination though for a temporary period was for that period final and governed the rights of the parties; and that thus an order refusing or granting a temporary injunction was a final determination, so far as the Court making that order was concerned, in regard to the rights of the parties in respect of the subject-matter of the proceeding pending the disposal of the suit and was, according to the test laid down in ILR (1952) Nag 471 : (AIR 1952 Nag 357) (FB) (Supra).

Learned counsel proceeded to say that if the decision in Manohar''s case ILR (1952) Nag 471 : (AIR 1952 Nag 357) (FB) was regarded as not supporting his contention, then the said decision required reconsideration in view of the observations of the Supreme Court in Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, on the definitions of ''judgment'' given by Sir Richard Couch C. J., in Justices of the Peace for Calcutta v. Oriental Gas Co. 8 Beng LR 433 : 17 Suth WR 364 and Sir Arnold White C. J. in the Full Bench decision of Madras High Court In Tuljaram v. Alagappa ILR 35 Mad 1 (FB). We were also referred by the learned counsel for the appellant to the Full Bench decision of the Allahabad High Court in Standard Glass Beads Factory and Another Vs. Shri Dhar and Others, holding that an order of a single judge of the High Court dismissing an appeal against an order granting temporary injunction is a ''Judgment'' within the meaning of Clause 10 of the Letters Patent.

In our view, the preliminary objection raised by the respondent must be upheld. The question whether the order of the learned Single Judge is appealable under Clause 10 of the Letters Patent depends on whether it is a ''judgment1 within the meaning of that clause. Various High Courts have considered, and expressed divergent views on, the meaning and scope of the term ''judgment'' as used in Clause 10 of the Letters Patent of this Court or in the corresponding clause of the Letters Patents of the other High Courts.

The question is no longer res integra so far as this court is concerned after the decision in ILR (1952) Nag 471 : (AIR 1952 Nag 357) (FB) (supra). In that case, the Full Bench fully considered the two leading decisions in 8 Beng LR 433 and ILR 35 Mad 1 (FB) and1 the decisions of other High Courts, following one of the two leading views wholly or partly, and of the Federal Court and the Privy Council. Hidayatullah J. (as he then was) expressed his view about the term judgment'' as used in the Letters Patent thus-

"A judgment means a decision in an action whether final, preliminary or interlocutory which decides either wholly or partially, but conclusively in so far as the Court is concerned, the controversy which Is the subject of the action. It does not include a decision which is on a matter of procedure, nor one which is ancillary to the action even though it may either imperil the ultimate decision or tend to make it effective. The decision need not be immediately executable per se but if left untouched, must result inevitably without anything further, save the determination of consequential details, in a decree or decretal order, that is to say, an executive document directing something to be done or not to be done in relation to the facts of the controversy. The decision may itself order that thing to be done or not to be done or it may leave that over till after the ascertainment of some details but it must not be interlocutory having for its purpose the ascertainment, of some matters or details prior to the determination of the whole or any part of the controversy."

Sinha C.J., expressed his agreement with this definition in general terms. This view in no way lends support to the contention advanced by the learned counsel for the appellant that the order of a Single Judge of this Court rejecting an appeal from an order granting temporary injunction is a ''judgment'' within the meaning of Clause 10 of the Letters Patent. This is clear from the observation that a ''judgment'' does not include a decision "which is ancillary to the action even though it may either imperil the ultimate decision or tend to make it effective."

In ILR 35 Mad 1 (FB), Sir Arnold White had said that an order in an independent proceeding "which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment affective if obtained) e.g., an order on an application for an interim injunction, or for the appointment of a receiver, is a ''judgment'' within the meaning of the clause."

This view was not accepted by the majority in Manohar''s case ILR (1952) Nag 471 ; (AIR 1952 Nag 357) (FB) (supra). Referring to Tuljaram''s case ILR 35 Mad 1 (FB) (supra), it was observed by Hidayatullah J. that -

"The decision in Tuljaram''s case ILR 35 Mad 1 (FB) is quite correct in so far as it says that an adjudication on an application which is nothing more than a step towards obtaining a final adjudication in a suit is not a judgment. I respectfully differ however from the definition of Sir Arnold White, C.J., when he says that even orders in ancillary proceedings are included because the professional meaning of

''judgment'' is that it is a decision obtained in an action, every other decision being an order vide per Lord Esher in Onslow v. Commissioner of Inland Revenue (1890) 24 QBD 584, approved by the Judicial Committee in Tata Iron and Steel Company Ltd. v. Chief Revenue Authority of Bombay AIR 1923 PC 148. I do not agree with the opinion that the word ''judgment'' means any final order, decree or judgment'' because that would amplify Clause 10 to the magnitude of Clause 29 and read words which are not there."

It is thus plain that according to the Full Bench decision in Manohar''s case an order on an application for an interim ''injunction is not a ''judgment'' within the meaning of Clause 10 and the decision of a learned Single Judge of this Court in appeal against such an order is not appealable wider that clause.

In Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, the Supreme Court did not give any exhaustive definition of the word ''Judgment'' occurring in Clause 15 of the Letters Patent of the Calcutta High Court and in the corresponding clauses of the Letters Patents of other High Courts, The Supreme Court noted the wide divergence of judicial opinion as expressed in De Souza v. Coles 3 Mad HCR 384, 8 Beng. LR 433 ILR 35 Mad 1 (FB), Dayabhai Jiwandas v. Murugappa ILR 13 Rang 457 : (AIR 1935 Rang 267) (FB) and other cases, and said -

"In view of this wide divergence of judicial opinion, it may be necessary for this Court at some time or other to examine carefully the principles upon which the different views mentioned above purport to be based and attempt to determine with as much definiteness as possible the true meaning and scope of the word ''judgment'' as it occurs in Clause 15 of the Letters Patent of the Calcutta High Court and in the corresponding clauses of the Letters Patent of the other High Courts. We are, however, relieved from embarking on such enquiry in the present case as we are satisfied that in none of the views referred to above could an order of the character which we have before us, be regarded as a ''judgment'' within the meaning of Clause 15 of the Letters Patent."

The Supreme Court then interpreted the decision in 8 Beng LR 433 : 17 Suth WR 364 (supra) and ILR 35 Mad 1 (FB) (supra) in their application to the case before them. Referring to the definition of ''judgment'' given by Sir Richard Couch in 8 Beng LR 433 : 17 Suth WR 364 (supra) the Supreme Court observed :

"It cannot be said, therefore, that according to Sir Richard Couch every judicial pronouncement on a right or liability between the parties is to be regarded as a ''judgment'', for in that case there would be any number of judgments in the course of a suit or proceeding, each one of which could be challenged by way of appeal. The judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. It certainly involves the determination of some right or liability, though it may not be necessary that there must be a decision on the merits. This view, which is implied in the observation of Sir

Richard Couch C. J., quoted above, has been really made the basis of the definition of "judgment" by Sir. Arnold White C.J., in the Full Bench decision of the Madras High Court to which reference has been made : vide 35 Madras 1 (FB). Recording to White C.J., to find out whether an order is a "judgment" or not, we have to look to its effect upon the particular suit or proceeding in which it is made. If its effect is to terminate the suit or proceeding, the decision would be a "judgment" but not otherwise. As this definition covers not only decisions in suit or actions but "orders" in other proceedings as well which start with applications, it may be said that any final order passed on an application in the course of a suit, e.g., granting or refusing a party"s prayer for adjournment of a suit or for examination of a witness, would also come within the definition. This seems to be the reason why the learned Chief Justice qualifies the general proposition laid down above, by stating that "an adjudication on an application, which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of Letters Patent." These observations, cannot be read as approving the view of Sir Arnold White in. ILR 35 Mad 1 (FB) (supra) that an order in an independent proceeding which is ancillary to a suit (not instituted as a step towards judgment but with a view to rendering the judgment effective if obtained)--e.g., an order on an application for an interim injunction, is a "judgment". By making the above observations the Supreme Court only indicated the essential features of a "judgment" according to the two decisions of the Calcutta and Madras High Courts, and pointed out that an order under Clause 13 of the Letters Patent of the Calcutta High Court did not satisfy the test of "judgment" as formulated by either of these High Courts, in the case before the Supreme Court the Calcutta High Court had made an order under Clause 13 of the Letters Patent transferring to itself a suit pending in a subordinate Court for trial in its extraordinary original jurisdiction. The Supreme Court held that the order was not a "judgment" and no appeal lay from it as it neither affected the merits of the controversy between the parties in the suit itself nor did it terminate or dispose of the suit on any ground, nor was it at all an order made by the Court in which the suit was pending but it was simply an order by a superior Court by which a live suit was transferred from one quorum to another. We are unable to discern in the decision of the Supreme Court in Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, any observation supporting the view that an order granting or refusing an interim injunction is a "judgment" within the meaning of Clause 10 of the Letters Patent.

The Supreme Court expressly refrained from framing an exhaustive definition of the word "judgment." That being so, the fact that the Supreme Court pointedly referred to the qualification made by Sir Arnold White to the test laid down by himself cannot be regarded as the view of the Supreme Court that an adjudication on an application in an ancillary proceeding, which is more than a step towards obtaining a final adjudication in the suit, is a "judgment" within the meaning of the Letters Patent. Indeed if the negative reasons given by the Supreme Court for holding that the order under Clause 13 of the Letters Patent made in the case before them was

not a ''judgment'' were to be applied for holding whether a particular order is or is not appealable, then clearly an order of injunction not being one affecting the merits of the controversy between the parties in the suit itself cannot be regarded as a ''judgment''. The suggestion, therefore, of the learned counsel for the appellant that the Full Bench decision in Manohar''s case ILR. (1952) Nag 471: (AIR 1952 Nag 357) (FB) (supra) is not in accord with the Supreme Court''s decision cannot be accepted.

A year after Manohar''s case ILR (1952) Nag 471 : (AIR 1952 Nae 357) (FB) was decided, Sinha C. J., and Bhutt J. held in Abaji v. Purushottam 1954 Nag LJ 7 that the decision of a Single Judge of the High Court affirming that of the trial Court in a pending action appointing a receiver of the property in suit is not open to appeal under Clause 10 of the Letters Patent as the decision is not a ''judgment'' within the meaning of the term in that clause. The judgment in Abaji''s case 1954 Nag L.J. 7 (supra) is not before us as the case originated in Vidarbha. But it is clear from the short note given in Namdeo v. Shaligram 1954 Nag LJ 4 that in coming to this conclusion the Division Bench, after referring to ILR (1952) Nag 471 : (AIR 1952 Nag 357) (F8) (Supra) and ILR 35 Mad 1 (FB) (supra), relied on Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, . From this it is obvious that the Division Bench did not regard an order appointing a receiver in a pending suit as affecting the merits of the controversy between the parties in the suit itself or putting an end to the suit on any ground, and the view expressed by Sir Arnold White in ILR 35 Mad 1 (FB) (supra) that an order in an ancillary proceeding instituted with a view to rendering the judgment effective was a ''judgment'' was not again accepted as correct. If the decision of a Single fudge affirming or setting aside an order of the original court appointing a receiver is not a ''judgment'' within the meaning of the term in Clause 10, then equally an order affirming or setting aside an ad interim injunction made by the trial Court is not a ''judgment''.

Shri Dabir, learned counsel for the appellant, however, stated that the decision in 1954 Nag LJ 7, was distinguishable by the fact that it related to the appointment of a receiver. In our opinion, this is not a valid distinction. There is a close similarity between the relief granted by the appointment of a receiver pendente lite and the relief of an interim injunction. The two reliefs are equitable remedies and are essentially preventive in their nature. Their common object is to preserve the res or the subject-matter of the suit unimpaired to be disposed of in accordance with the future decree or order of the Court. It is to preserve the fund or property in litigation in status quo for the benefit of whoever may finally be determined to be entitled thereto. The remedies are of ancillary nature and when they are granted, there is no final determination of any question of right or title which may be involved in the litigation and the Court granting the relief does not adjudicate upon the rights of the parties (see Kerr on Receivers, 3rd edn. p. 9; Woodroff''s Injunctions (1900) p. 16; and High on Receivers para 737).

In Woodroffs ''Law relating to Receivers'' it has been stated at page 95 that the appointment of a receiver in limine "therefore, like the granting of a preliminary or interlocutory injunction is not an ultimate determination of the right or title and the Court in passing upon the application in no manner decides the question of the right involved, nor anticipates its final decision upon the merits of the controversy; the leading idea upon the preliminary application being merely to husband the property or fund in litigation for the benefit of whoever may be determined in the end to be entitled thereto. The decision upon the application for a receiver pendente lite is, therefore, without prejudice to the final decree which the Court may be called upon to make, and the Court expresses no opinion as to the ultimate questions of right involved. And if the plaintiff presents a prima facie case, showing an apparent right or title to the thing in controversy and that there is imminent danger of loss without the intervention of the Court, the relief may be granted without going further into the merits upon the preliminary application." It is thus, clear that a decision of the Court in granting or refusing ad interim injunction is without prejudice to the ultimate decision which the Court may take as to the rights and liabilities of the parties which may be involved in the litigation. That being so, the ad interim, order of injunction cannot be regarded as an order affecting the merits of the controversy between the parties in the suit itself and is, therefore, not a ''judgment''.

Learned counsel, for the appellant placed strong reliance on Standard Glass Beads Factory and Another Vs. Shri Dhar and Others, . This case no doubt supports his contention. But nothing that has been stated in that case inclines us to take the view that the decision in Manohar''s case ILR (1952) Nag 471 : (AIR 1952 Nag 357) (FB), requires reconsideration. In the Allahabad case, Mootham C.J. and Raghubar Dayal J. held that the term ''judgment'' as used in Clause 10 included a "final judgment, a preliminary judgment and interlocutory judgment" and that an order of a Single Judge of the High Court dismissing an appeal against an order granting a temporary injunction was an order which finally determined the rights of a party to a specific temporary relief. Shrivastava J., who was the third member of the Full Bench came to a contrary conclusion. The majority decision is based on ILR 35 Mad 1 (FB) (supra). This decision, as already pointed out, met with a qualified approval in Manohar''s case ILR (1952) Nag 471 : (AIR 1952 Nag 357). Mootham C. J., with whom Raghubar Dayal J. agreed, observed that in Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, the Supreme Court had expressed the opinion that an order directing a plaint to be rejected or taken off the file or an order rescinding leave granted under Clause 12 of the Letters Patent of the Calcutta High Court were ''judgments'' within the meaning of Clause 15. He further observed that "the grant or refusal of an interim injunction may cause substantial loss to a party adversely affected by the order; and the refusal to grant this provisional relief may result in the suit becoming largely infructuous. Such an order if made by a subordinate court is appealable under Order 43 Rule 1 Clause (r) C. P. C.: it is, as we have seen an order from which

in England an appeal lies, without leave, to the Court of Appeal.

If the narrower view of the meaning of the word "judgment" be correct such an order when made by a Judge of a High Court in India exercising original jurisdiction would not be "appealable". There is no analogy between an order directing a plaint to be rejected or taken off the file or an order rescinding leave granted under Clause 12 of the Calcutta High Court"s Letters Patent and an order refusing or granting a temporary injunction. In the former type of orders the question involved is of the jurisdiction of the Court to entertain or proceed with a suit or proceeding and a decision on such a question though not one on the merits of the claim in issue in the suit is on a matter of controversy between the parties, namely, whether their rights and liabilities can be adjudicated upon by a particular Court at all and be adjudicated upon at the time and goes to the very root of the suit.

As pointed out by the Supreme Court in Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, (supra)-

"Leave granted under Clause 12 of the Letters Patent constitutes the very foundation of the suit which is instituted on its basis. If such leave is rescinded the suit automatically comes to an end and there is no doubt that such order would be a judgment. If, on the other hand, an order is made dismissing the Judge"s summons to show cause why the leave should not be rescinded, the result is, as Sir Lawrence Jenkins pointed out, vide Vaghoji v. Camaji ILR 29 Bom 249, that a decision on a vital point adverse to the defendant, which goes to the very root of the suit, becomes final and decisive against him so far as the Court making the order is concerned. This brings the order within the category of a "judgment" as laid down in the Calcutta cases".

With all due deference to the learned judges of the Allahabad High Court the considerations stated by them in paragraph 10 of the majority judgment (reproduced earlier) cannot be taken into account In determining whether an order granting or refusing a temporary injunction is a "judgment" appealable under Clause 10 of the Letters Patent. Here it may be pointed out that the statement of Shrlvastava J. in the Allahabad case that in Manohar"s case ILR (1952) Nag 471 : (AIR 1952 Nag 357) (FB), the view of Page C. J. in ILR 13 Rang. 457 : (AIR 1935 Rang 267) (FB) (supra), that the word "judgment" meant only a decree and no other order was followed, is not correct. That the statement is Incorrect is plain from the judgment of Hidayatullah J. He stated as follows:

"The definition of Page, C. J., follows the dictum of the Privy Council. The Dakore Temple case ( AIR 1925 155 (Privy Council) ), did not lay down a definition of the term "judgment". The observation of their Lordships is understandable only in its latter part since it transfers the controversy from, the terms "judgment" in the term "decree" as used by their Lordships. It is impossible to hold that their Lordships used that word as defined in the Civil Procedure Code."

Before concluding it would be pertinent to refer to two decisions of the Calcutta High Court, namely, Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another, , and Mohammed Felumeah Vs. S. Mondal and Others, . In the first Calcutta case, one Shorab Modi filed a suit in Bombay High Court against Mansata Film Distributors. The Distributors themselves had filed a suit on the same cause of action in the Calcutta High Court against Shorab. Modi. The learned Judge of the Calcutta High Court, trying the suit made three orders: one refusing to issue an injunction against Modi restraining him from prosecuting the Bombay suit, another refusing to revoke the leave granted under Clause 12 of the Letters Patent, and the third refusing to stay the Calcutta suit u/s 10 C. P. C. When Letters Patent appeals against these orders were filed, objections were raised that they were not competent as those orders were not judgments within the meaning of Clause 15 of the Letters Patent.

Chakravarti C.J. held, following the case of Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, (supra), that an order refusing to rescind the leave granted under Clause 12 of the Letters Patent was appealable. He also observed that where the question of the jurisdiction of the Court to entertain or proceed with a suit or proceeding is involved and a decision on that question is given, such decision affects the merits of the controversy between the parties and, therefore, the order refusing to stay the suit u/s 10 C. P. C. is a "judgment" within the meaning of Clause 15 Letters Patent. This case is thus distinguishable on the ground that the orders in that case went to the root of the suit and decided a matter of controversy between the parties, namely, whether the rights and liabilities of the parties can be adjudicated upon by a particular Court at all. In the other Calcutta case, a Single Judge of the High Court had made an ex parte interim injunction in favour of the petitioner in a writ proceeding. On an application by the respondent for vacating the said order another Single Judge of the High Court modified the interim injunction by al lowing the issue of a temporary licence in favour of the respondent. A Division Bench of the Calcutta High Court held that the modification order of the Single Judge amount ed to a "judgment", within the meaning of Clause 15 as the modification proceeding involved the determination of the rights and liabilities of the parties in regard to the subject-matter of the writ proceedings and that the determination though for a temporary period, that is during pendency of the writ proceeding, would be final for that period and would govern the parties. This decision also supports the appellant. But, as pointed out earlier, it is difficult to accede to the reasoning that the issue of a temporary order of injunction in a writ proceeding involves a final determination of some right or liability affecting the merits of the controversy between the parties in the proceedings.

For the foregoing reasons, we are of the opinion that the order of the learned Single Judge upholding the order of the trial Court granting a temporary injunction is not a "judgment" within the meaning of Clause 10 of the Letters Patent, and this appeal is, therefore, in competent. The appeal is accordingly dismissed with costs.

Counsel''s fee is fixed at Rs. 75/-.