

(1967) 10 BOM CK 0017

Bombay High Court

Case No: Civil Revi. Application No"s. 401 with C.R. Appls. No"s. 402 and 403 of 1966

Ramkrishna Ramnath (Firm) and
others

APPELLANT

Vs

Commissioner of Sales Tax,
Indore, M.P. and another

RESPONDENT

Date of Decision: Oct. 24, 1967

Acts Referred:

- Bombay Civil Courts Act, 1869 - Section 16, 17, 26, 8
- Civil Procedure Code, 1908 (CPC) - Section 106, 115

Citation: (1968) MhLj 284

Hon'ble Judges: D.B. Padhye, J

Bench: Single Bench

Advocate: H.W. Dhabe, for the Appellant; K.V. Tambe and W.K. Sheorey, for the Respondent

Final Decision: Dismissed

Judgement

D.B. Padhye, J.

These three revision applications raise a common question of law and are disposed of by one common order.

2. The applicants-plaintiffs filed three suits in the Court of the Civil Judge, Senior Division, Nagpur, against the opponents-defendants. Each of these suits was valued for the purposes of jurisdiction at more than Rs. 10,000. In the suits, one of the relief's claimed by the plaintiffs was of perpetual injunction against the defendants restraining them from recovering the amount of the sales tax. During the pendency of these suits the plaintiffs-applicants filed applications for temporary injunction restraining the defendants from recovering the amounts of the Bales tax from the plaintiffs during the pendency of the suits. On the applications an ad interim injunction, was granted, but subsequently it was vacated by the learned Judge of the

lower Court by his orders dated 15-10-1966. Against these orders vacating the ad interim injunction, the plaintiffs-applicants filed three appeals before the District Judge, Nagpur. These orders are appealable under Order 43, rule 1 (r) of the Code of Civil Procedure.

3. The learned appellate Judge held that these appeals could not be entertained before him and hence the appeals were ordered to be returned for representation to the proper Court. Against these orders the present revision applications have been filed by, the applicants-plaintiffs.

4. Section 106 of the CPC provides:

Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by "a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

The appeals from the decrees in the three suits would lie to the High Court since the valuation of these suits is more than Rs. 10,000. Section 106 of the CPC prescribes the same rule in respect of any order passed in that suit which is appealable. According to the provisions of section 106, therefore, an appeal against any order which is passed in the suit would lie to the High Court since the decree in that suit could be challenged only in the High Court, The Learned Counsel for the applicants however relied on the provisions of sections 8 and 26 of the Bombay Civil Courts Act, 1869. Section 8 *ibid* provides:

Except as provided in sections 16, 17 and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

5. Sections 16 and 17 of the Bombay Civil Courts Act are not relevant for the purposes of these revisions. The other relevant provision is section 26 which is, so to say, an exception to section 8 of the said Act. It provides:

In all suits decided by a Civil Judge of which the amount or value of the subject-matter exceeds ten thousand rupees, the appeal from his decision shall be direct to the High Court.

6. It is contended on behalf of the applicants that the Court of the Civil Judge, Senior Division, being a subordinate Court to the District Court, normally an appeal from any order passed by the Civil Judge, Senior Division, would lie to the District Court, if such order is appealable. Similarly, appeals against all decrees passed by the Courts subordinate to the District Court will also lie to the District Court. That is the effect of section 8, but section 26 carves out an exception to this provision and makes an exception with respect to the suits valued over Rs. 10,000. The effect of section 26 of the Bombay Civil Courts Act would be that appeals against the decrees passed in suits which are valued at more than Rs. 10,000 by the Court of Civil Judge. Senior

Division, would not lie to the District Court but they will lie to the High Court. The Learned Counsel for the applicants, however, contended that the exception given in section 26 of the Bombay Civil Courts Act could not apply to the order; passed by the subordinate Courts and much less, to orders passed in applications, such as for temporary injunction even though the value of the suit for the purposes of jurisdictions is more than Rs. 10,000. So far as appealable orders in the suits are concerned, apart from orders in applications such as for temporary injunction etc, I have no doubt that an appeal shall lie to the High Court if the value of the suit is more than Rs. 10,000. The word used in section 26 of the Bombay Civil Courts Act is "decision" and does not refer to "decree" or "order". The decision will cover both a decree and order and by reason of section 26, all the decrees as well as orders passed by the Court of the Civil Judge, Senior Division, would lie to the High Court if the value of the suit for the purposes of jurisdiction is more than Rs. 10,000.

7. What then is the position of decisions in matters like temporary injunctions? An application for temporary injunction though filed during the pendency of a suit or an appeal is to some extent an independent proceeding and does not affect the merits of the suit or the appeal. In fact it has no reference to the proceedings in the suit or appeal and has to be decided independently on its own merits. It has, however, reference to the proceedings in the suit in one matter. The application for temporary injunction must be with respect to the subject-matter of the suit or appeal and must have a relation to the relief asked in the suit or appeal. It is for this purpose that an independent appeal against an order on the application for temporary injunction is specifically provided in Order 43 of the CPC and without waiting for the final result of the suit, an appeal against the order on the application for temporary injunction can be filed even when the suit is pending. In fact, no appeal could be filed against an order on the application for temporary injunction when the ultimate decree in the suit is appealed from and in any case, such a remedy would be utterly worthless because the relief which is claimed by way of a temporary injunction is an ad interim relief during the pendency of the suit itself.

8. The Learned Counsel for the applicants has cited a decision of this Court in *Bai Atrani v. Deep Sing Baria* 17 Bom.LR 1097 in which the question was whether for the purposes of a revision application u/s 115 of the CPC the order on an application for temporary injunction was "a case decided" and it was held that such an order was "a case decided" and as such an application for revision u/s 115 of the CPC was competent. The other case which has been cited by the Learned Counsel for the applicants is *Desai Venechand Rajpal v. Lakhmichand Manekchand* ILR 44 Bom. 272 = 21 Bom. L K 955. In this case, the question was whether an order refusing to grant an injunction was not a "judgment" within the meaning of clause 15 of the Letters Patent and no appeal lay against that order and it was held that such an order was not the "judgment". In fact this decision has no relevance to the controversy present in the case. The decision in 17 Bombay Law Reporter is also of not much assistance for deciding the question arising in the present revision applications. The question

here is not whether the revision application to this Court u/s 115 of the CPC is or is not competent. Question is whether the District Judge was competent to hear the appeal from the order of the Civil Judge, Senior Division, when the valuation of the suit for purposes of jurisdiction was more than Rs. 10,000.

9. To this question an answer is provided by the provisions of section 106 of the Code of Civil Procedure, which says:

Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

There is no dispute in the case that appeals against the decrees which would be passed in the three suits would lie to the High Court alone as the valuation in each of these suits is more than Rs. 10,000 and this would apply to all orders which are made appealable and passed during the pendency of the suit. An order on the application for temporary injunction could be such an order against which an appeal is expressly provided by Order 43, rule 1 (r) of the Code of Civil Procedure. Section 26 of the Bombay Civil Courts Act, 1869, has also to be interpreted in the same manner and it applies not only to appeals against the decrees ultimately passed in the suit, but also to all orders that are passed during the pendency of the suit, whether they affect the merits of the suit itself or are independent of the merits of the suit because against every decision, which would include a decree and an order by a Civil Judge in a suit of which the amount or value of the subject-matter exceeds Rs. 10,000, appeal lies to the High Court. Further it cannot be said that the proceedings for temporary injunction are absolutely independent of the proceedings in the suit since an application for temporary injunction must have relation to the subject-matter of the suit and must also be related to the relief which is claimed in the suit itself and hence it is but proper that all appeals arising out of any appealable order in the suit must lie to only one Court and it could not have been the intention of the Legislature to provide for some appeals to be filed before the District Judge and other appeals to be filed before the High Court.

10. In this view, I hold that the appeals against the orders passed by the Civil Judge in the temporary injunction matters lay only to the High Court and not before the District Judge. The District Judge was, therefore, right in not entertaining the appeals as they were not competent. These revision applications are, therefore, dismissed with costs. However, since all these revision applications raised a common question of law and only one set of argument was advanced, there will be one set of counsel's fees only. The applicant in each of these three revision applications will now take immediate steps to take back the appeals from the Court of the District Judge as directed by the District Judge, if they so desire and take further steps to represent those appeals before the High Court expeditiously.