

PETITIONER:
RAMESH AND ANOTHER

Vs.

RESPONDENT:
SETH GENDALAL MOTILAL PATNI AND OTHERS

DATE OF JUDGMENT:
06/01/1966

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 1445 1966 SCR (3) 198
CITATOR INFO :
RF 1967 SC1182 (8)
R 1968 SC 733 (8,10,11)
F 1968 SC1227 (3)
F 1970 SC1972 (5,6,7)
R 1971 SC 100 (6,7)
RF 1971 SC 771 (1)
D 1971 SC2319 (1)
R 1972 SC1598 (12,13)
R 1978 SC 47 (15)
C 1980 SC 962 (59)
RF 1986 SC1272 (88)

ACT:
Constitution of India, Art. 133-Appeal whether lies to Supreme Court from High Court's order in extraordinary civil jurisdiction under Art. 226--Proceeding under Art. 226 when a 'civil proceeding'-Final order, what is.

HEADNOTE:
In proceedings under s. 19(1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, on the application of the appellant, it was held by the Claims Officer that the debt due to P, the first respondent, was a secured debt despite the fact that a decree had been passed in respect of the debt. The Claims Officer asked P to file a statement of claim under s. 22 of the Act. Although the Board of Revenue held that the Claims Officer had no Jurisdiction to determine the nature of debt, P, by way of caution, filed a statement of claim under r. 22. The Claims Officer held it to be out of time and discharged the debt. On appeal by P the Commissioner held that although the Claims Officer had jurisdiction to decide on the nature of the debt, the debt was wrongly discharged by him as action under s. 22(1) had not been taken. The appellant thereupon filed a petition under Arts. 226 and 227 on the ground inter alia that the Commissioner had no jurisdiction to entertain and decide the appeal. The High Court summarily dismissed the petition. The appellants next applied for a certificate of fitness which was refused. The

appellants came to this Court by special leave! and contended that the High Court had wrongly refused the certificate. The questions that came up for consideration were : (i) Whether the petition under Art. 226 in the High Court was a 'civil proceeding', (2) whether an appeal under Art. 133 lay only in a proceeding in the exercise of the appellate or ordinary civil jurisdiction of the High Court, and not the extraordinary original civil jurisdiction under Art. 226 and (3) whether the order of the High Court summarily dismissing the writ petition of the appellants was a final order.

HELD : (i) A proceeding under Art. 226 for a writ to bring up a proceeding for consideration is a 'civil proceeding' if the original proceeding concerned civil rights. [203 G] The dichotomy between civil and criminal proceedings made by the civil law jurists is apparently followed in Arts. 133 and 134 and any proceeding affecting civil i.e. private rights, which is not criminal in nature, is civil. [203 E] S. A. L. Narayan Row & Anr. v. Ishwarlal Bhagwandas & Anr., A.I.R. 1965 S.C. 1818, [1966] 1 S.C.R. 190, relied on.

In the present case the Claims Officer purported to exercise a jurisdiction under which he could order the discharge of a debt which means that the order affected the civil rights of the parties. The Commissioner's order reversing the order of the Claims Officer also affected the same civil rights. The proceedings before the revenue authorities were therefore

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civil proceedings and those in the High Court must also be regarded as, of the same nature. [203 C-E]

(ii) It is not permissible by reference to the history of appeals to the Privy Council under ss. 109 and 110 of the Civil Procedure Code to exclude from the scope of Art. 133 matters heard by the High Court in the exercise of extraordinary original civil jurisdiction. Article 133 Uses the widest possible language. The intention is not only to include all judgments, decrees and orders passed in the exercise of appellate and ordinary civil jurisdiction but other jurisdictions as well in which civil rights would come up before the High Court for decision. The drafters of the Constitution were aware that a new jurisdiction was being conferred on the High Courts under Art. 226 and that the new jurisdiction would often result in decision affecting civil i.e. private rights, and the need to provide, for appeals to this Court against such decisions must have been obvious. The right of appeal is thus stated in general words in Arts. 132 and 133 and no exception not mentioned in the articles can be implied. [204 D-G]

(iii) A petition to the High Court invoking jurisdiction under Art. 226 is a proceeding quite independent of the original controversy. A decision in the exercise of this jurisdiction whether interfering with the proceedings impugned or declining to do so is a final decision in so far as the High Court is concerned if the effect is to terminate the controversy before it. [206 C-D]

In the present case the High Court by summarily dismissing the appellants' writ petition upheld the jurisdiction of the Commissioner to make the order he did and the fact that the High Court's order was not a speaking order made no difference. The High Court's order had the affect of once again reviving the debt in question. The order must be regarded as final for the purpose of appeal to this Court. [206 H-207 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 950 of 1965. Appeal by special leave from the judgment and order dated February 1, 1965 of the Bombay High Court (Nagpur Bench) at Nagpur in Misc. Application No. 13 of 1965.

C. B. Agarwala, B. R. L. Iyengar, G. L. Sanghi and A. G. Ratnaparkhi, for the appellants.

M. S. Gupta, for respondent No. 1

D. R. Prem and B. R. G. K. Achar, for respondents Nos. 2 and 3.

The judgment of the Court was delivered by Hidayatullah, J. This is an appeal by special leave against an order dated February 1, 1965 of the High Court of Bombay (Nagpur Bench) in Miscellaneous Petition No. 13 of 1965 refusing a certificate under Art. 133 (Is) (a) or (c) of the Constitution. This certificate was asked by the appellants in respect of the order of the High Court dated September 21, 1964 in Special Civil Application No. 471 of 1964. Both these orders summarily dismissed the respective petitions. Against the main order Special

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Leave Petition (Civil) No. 395 of 1965 has been filed but by an order of this Court dated July 30, 1965, it has been kept Pending sine die with liberty to bring it up for hearing after the disposal of the present appeal. This is because the appellants claim in this appeal that appeal lay as of right to this court and the certificate was wrongly refused by the High Court. Before we discuss the question mooted before us we shall state the facts sufficient for the purpose.

On the passing of the Madhya Pradesh Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act, 1950, the appellants applied under s. 19(1) of the Act for the determination of their debts, specifying the amounts and particulars of all secured debts and claims together with the names of the creditors. One such creditor, named by them, is Gendalal Motilal Patni who is the first respondent. His debt was a mortgage debt originally but had resulted in a decree for Rs. 2,16,309. Patni objected that this had ceased to be a secured debt or secured claim for the application of S. 17 (a) of the Abolition Act. The objection was taken under s. 21.

The Claims Officer overruled the objection of Patni by an order dated November 19, 1951. 'He held that although the debt had merged in a decree it remained a secured debt nevertheless and that as the amount was recoverable on the date of vesting, the provisions of the Act were applicable to it. By another order of the same date the Claims Officer called upon Patni to file his statement of claim under S. 22 of the Act. Patni did not file the statement but instead preferred an appeal against the main order before the former Madhya Pradesh Board of Revenue. The Board of Revenue held on June 15, 1954 that the Claims Officer had no jurisdiction to determine the character of the debt and only the Civil Court could decide this issue. In reaching this conclusion the Board followed a decision of the Nagpur High Court reported in Ramkrishna v. Board of Revenue(1).

Patni next moved the Civil Court and the Civil Court decided that the debt in question was a secured debt for the application of the Abolition Act. Patni appealed to the High Court but out of caution filed his statement of claim before the Claims Officer on January 23, 1958. The ex-proprietors (the appellants here) Objected to the statement

on the ground that it was out of time, and asked that the claim be held discharged. The Claims Officer accepted the objection and discharged the claim by an order dated (1) A.T.R. 1954 Nag. 248.

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December 24, 1962. Patni appealed to the Commissioner, Nagpur Division, Nagpur (Rev. Appeal No. 2/57/62/63) and by an order of May 5, 1964 the order of the Claims Officer was set aside. The Commissioner pointed out that the decision of the Nagpur High Court earlier referred to was overruled in the subsequent case of the High Court reported in A.I.R. 1956 Nagpur 193 and the Claims Officer had jurisdiction to pronounce on the character of the debt. The order of the Claims Officer of November 19, 1951 was thus held to have revived but the claim could not be discharged as action under s. 22(1) had not been taken. The case was remanded to the Claims Officer for disposal according to law.

The appellants thereupon filed a petition under Arts. 226 and 227 of the Constitution in the High Court of Bombay (Nagpur Bench) on the ground that the Commissioner had no jurisdiction to entertain and decide the appeal and that the Claims Officer had ordered the continuation of the proceedings and so the order of the Commissioner was wrong. The High Court summarily dismissed the petition by its first order dated September 21, 1964 against which Special Leave Petition (Civil) No. 395 of 1965 has been filed. The appellants next applied for a certificate which was refused by order dated February 1, 1965, impugned in the present appeal, and the question involved is : whether the appellants were entitled to a certificate as of right under Art. 133

(1) (a) or (b) ?

his question falls to be considered under Art. 133 of the constitution. That article reads :

133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question

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respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court; and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (c). if the High Court further certifies that the appeal involves some substantial question of law.

(Clauses (2) and (3) of Art. 133 are not relevant).

Under sub-cl. (a) and (b) of cl. (1) of this article an appeal lies on certificate of the High Court. That certificate may only be issued in cases in which the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal to the Supreme Court was or is not less than Rs. 20,000 or the Judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value. Sub-clause (c) is free from any monetary valuation, and under it a special certificate can be issued even in cases involving claims or questions respecting property less than Rs. 20,000 if the High Court considers the case as fit for appeal. Other considerations then apply which need not be considered here. The present appeal involves a consideration of sub-cl. (a) and (b) only, because, it is submitted, the certificate was claimable as of right.

There is, to begin with, no doubt that the amount or value of the subject matter of the dispute in the High Court and still in dispute on appeal to this Court is well above Rs. 20,000. This attracts sub-cl. (a). In any event, the decision of the High Court involves directly or indirectly a claim above that amount and that attracts sub-cl. (b). Mr. M. S. Gupta for the answering respondent does not rightly contest this fact. He submits that cl. (1) of Art. 133, considered as a whole, gives a right of appeal only against judgments, decrees or final orders passed by the High Court in the exercise of either the appellate jurisdiction or ordinary original civil jurisdiction (where a High Court possesses that jurisdiction under its Letters Patent) but not against a judgment, decree or final order passed in the exercise of extra-ordinary original civil jurisdiction under Art. 226 of the Constitution. He further submits that an order dismissing summarily a petition under Art. 226 of the Constitution is not a judgment, decree or final order from which an appeal can properly be brought under

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Art. 133. Lastly, he submits that a proceeding commenced on an application for a writ is not a civil proceeding at all. Article 133 must cover all civil proceedings because no exception is indicated. The question is whether the proceeding in the High Court can be described as civil proceedings. The High Court in the present case was invited to interfere by issuing writs of certiorari and prohibition against the reopening of the case in which the Claims Officer had discharged a debt due to the answering respondent. The revenue authorities in such matters act analogously to civil courts, have a duty to act judicially, and pronounce upon the rights of parties. In the present case the Claims Officer purported to exercise a jurisdiction under which he could order the discharge of a debt which means that the order affected the civil rights of the parties. The Commissioner's order reversing the order of the Claims Officer also affected the same civil rights of the parties. The proceedings before the revenue authorities thus were concerned with the civil rights of two contending parties. They were civil proceedings. The proceedings in the High Court must also be regarded as of the same nature. The term civil proceeding has been held in this Court to include, at least, all proceedings affecting civil rights, which are not criminal. The dichotomy between civil and criminal proceedings made by the Civil Law jurists is apparently followed in Arts. 133 and 134 and any proceeding affecting civil i.e. private rights, which is not criminal in nature, is civil. This view was expressed recently by

this Court in S. A. L. Narayan Row and another, etc. v. Ishwarlal Bhagwandas and another, etc.(1). Shah J, speaking for the majority, first summarises all the provisions in the Constitution bearing upon appeals to this Court and after analysis, holds that the words "civil proceeding" are used in the widest sense, that in contradistinction to criminal proceedings they cover all proceedings which affect directly civil rights. 'LA' proceeding under Art. 226 for a writ to bring up a proceeding for consideration must be a civil proceeding, if the original proceeding concerned civil rights. Here the civil rights of the parties were directly involved and the proceeding before the High Court was thus a civil proceeding. The first requisite for the application of Art. 133(1) is thus satisfied.

The next question is what are the different kinds of decisions from which appeals lie under Art. 133. Mr. Gupta's contention that under that article an appeal can only lie in respect of a judgment or decree or final order passed in the exercise of appeal-

(1) A.I.R. 1965 S.C. 1818 :[1966] 1 S.C.R. 190
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late or ordinary original civil jurisdiction but not of extraordinary original civil jurisdiction, is not right. He is apparently harking back to the provisions for appeal in ss. 109 and 110 of the Code of Civil Procedure and inasmuch as appeals under those sections were available against judgments, decrees and final orders passed in the exercise of appellate or ordinary original civil jurisdictions only, he thinks, the same position continues still to obtain and judgments, decrees or final orders passed in the exercise of the extraordinary original civil jurisdiction are excluded. He seeks, in other words, to limit the opening words of Art. 133(1) by reference to the history of appeals to the Privy Council under ss. 109 and 110 of the Code of Civil Procedure. In *Municipal Officer, Aden v. Abdul Karim*(1) this distinction in fact was made and the provisions of the amended cl. (40) of the Letters Patent of the Bombay High Court were called in aid. Mr. Gupta cannot avail himself of the same argument in view of the use of the words "any judgment, decree or final order in a civil proceeding of a High Court" in the opening part of Art. 133(1). Article 133 not only discards the distinction between appellate and original jurisdictions but deliberately used words which are as wide as language can make them. The intention is not only to include all judgments, decrees and orders passed in the exercise of appellate and ordinary original civil jurisdiction but also to make the language wide enough to cover other jurisdictions under which civil rights would come before the High Court for decision. The drafters of the Constitution were aware that a new jurisdiction was being conferred on the High Courts by Art. 226 of the Constitution and proceedings before any court or Tribunal within the jurisdiction of the High Court, including in appropriate cases before Government would be brought before the High Court and dealt with by issuing writs of certiorari, mandamus and prohibition. That the new jurisdiction would often result in decisions affecting civil i.e. private rights must have been apparent and the need to provide for appeals to this Court from the determinations of the Courts must have been equally obvious. The right of appeal to this Court is thus stated in general words in Arts. 132, 133 and no exception not mentioned in the articles can be implied. Cases involving an interpretation of the Constitution are dealt with in Art. 132. That article covers all cases in

which a High Court certifies that any judgment, decree or final order of the High Court involves a substantial question as to the interpretation

(1) I.L.R. 28 Bom. 292.

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of the Constitution. A certificate under that article may issue in any civil, criminal or other proceeding to bring to appeal a judgment, decree or final order of the High Court. The reference to "other proceedings" was considered necessary because there are certain proceedings, which are not strictly civil or criminal in nature and they may yet involve the interpretation of the constitution. Article 132, therefore, omits no decision if a substantial question as to the interpretation of the Constitution is necessary to be decided, provided, of course, that the decision in respect of which the certificate is asked or granted is "a judgment, decree or final order".

Article 133, on the other hand, provides for appeals against any judgment, decree or final order in a "civil proceeding". We have explained what is meant by a civil proceeding and have held that such proceedings must concern civil rights including those arising from status as well as contract. Once that test is satisfied the word "Proceeding" is a word of very wide import. We have held that the proceeding in the High Court was a civil proceeding and although it was for the exercise of extraordinary original civil jurisdiction, the word "any" must take in a decision provided it is a judgment, decree or final order.

Mr. Gupta, however, submits that the order of the High Court was not "a judgment, decree or final order" and gives two reasons. He says that as the order said nothing about the merits of the controversy it cannot amount to the kind of determination which those words contemplate and that as it does not of its own force affect the rights of the parties or finally put an end to the controversy it cannot be regarded as final.

There is no doubt that the order must possess a finality for that is what the article itself says. It is also true that it has been held that an order is not a final order, unless it finally disposes of the rights of the parties and does not leave them to be determined in the ordinary way or as it is said that if the suit is still a live suit in which the rights of the parties have still to be determined, there is no finality and no appeal lies. Mr. Gupta has brought to our notice all the cases of the Judicial Committee and this Court in which this test has been applied.

The submissions of Mr. Gupta would have had considerable force if we were considering the exercise of appellate or revisional jurisdictions of the High Court and the whole of the controversy had not been decided by the High Court. An appeal and a revision is a continuation of the original suit or proceeding and the

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finality must therefore attach to the whole of the matter and the matter should not be a live one after the, decision of the High Court if it is to be regarded as final for the purpose of appeal under Art. 133.

We are concerned here with the exercise of extraordinary original civil jurisdiction under Art. 226. Under that jurisdiction, the High Court does not hear an appeal or revision. The High Court is moved to intervene and to bring before itself, the record of a case decided by or pending before a court or tribunal or any authority within the High Court's jurisdiction. A petition to the High Court invoking this jurisdiction is a proceeding quite independent of the

original controversy. The controversy in the High Court, in proceedings arising under Art. 226 ordinarily is whether a decision of or a proceeding before, a court or tribunal or authority, should be allowed to stand or should be quashed, for want of jurisdiction or on account of errors of law apparent on the face of the record. A decision in the exercise of this jurisdiction, whether interfering with the proceeding impugned or declining to do so, is a final decision in so far as the High Court is concerned because it terminates finally the special proceeding before it. But it is not to be taken that any order will be a final order. There are orders and orders. The question will always arise what has the High Court decided and what is the effect of the order. If, for example, the High Court declines to interfere because all the remedies open under the law are not exhausted, the order of the High Court may not possess that finality which the article contemplates. But the order would be final if the jurisdiction of a tribunal is questioned and the High Court either upholds it or does not, In either case the controversy in the High Court is finally decided. To judge whether the order is final in that sense it is not always necessary to correlate the decision in every case with the facts in controversy especially where the question is one of jurisdiction of the court or tribunal. The answer to the question whether the order is final or not will not depend on whether the controversy is finally over but whether the controversy raised before the High Court is finally over or not. If it is, the order will be appealable provided the other conditions are satisfied, otherwise not.

In the present case the question raised was whether the Commissioner had jurisdiction to set aside the discharge of the debt ordered by the Claims Officer. This jurisdiction was challenged by the proceedings under Art. 226. The High Court sum-

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marily dismissed the petition. In other words, it upheld the jurisdiction and in the circumstances it makes no difference whether the High Court pronounced a speaking order or not. By its decision the High Court has finally decided the question of jurisdiction. It is obvious that if the High Court had decided to hold that there was no jurisdiction, the debt would have stood discharged. The order once again revived the debt. Now the order of the Commissioner was challenged on the ground of jurisdiction in a separate proceeding. The High Court decided to dismiss the petition and the order that was passed must be regarded as final for the purpose of appeal to this Court. As the other requirements of the article were satisfied the High Court was in error in refusing the certificate in this case. The appeal must, therefore, succeed. The order dated February 1, 1965 is set aside and the case will now go back to the High Court for disposal according to law. The first respondent shall bear the costs of the appellant.

Civil Miscellaneous Petition No. 2180 of 1965 was not pressed and is dismissed. There will be no order as to costs in this petition.

Appeal allowed.

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