

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

C.M. No.2475/2009 in RFA No.855/2003

Date of Decision: May 05, 2010

ARATI BHARGAVA & ANR Appellants
through Mr. Ram Jethmalani, Senior Advocate
with Mr. Alok Kumar, Mr. Deepak Mittal,
Mr. P.R.Mala, Ms. Lataa Krishnamurthi &
Mr. Pranav Diesh, Advocates

versus

MADHUR BHARGAVA & ORS Respondents
through Mr. O.N.Vohra, Special Attorney
with Ms. Shradha Bhargava, Advocate
for respondents No.1 to 3.
Ms. Soni Singh, Advocate for respondent No.4.

C.M. No.2449/2009 in RFA No.732/2003

MADHUR BHARGAVA & ORS Appellants
through Mr. O.N.Vohra, Special Attorney
with Ms. Shradha Bhargava, Advocate

versus

ARATI BHARGAVA & ANR Respondents
through Mr. Ram Jethmalani, Senior Advocate
with Mr. Alok Kumar, Mr. Deepak Mittal,
Mr. P.R.Mala, Ms. Lataa Krishnamurthi &
Mr. Pranav Diesh, Advocates for respondents
No.1 & 2.
Ms. Soni Singh, Advocate for respondent No.3.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the 'Digest'? Yes

REKHA SHARMA, J.

Four Regular First Appeals bearing RFA Nos.732/2003, 855/2003, 878/2003 & 912/2003 were filed against common judgment and decree passed by Additional District Judge, Shri S.M.Chopra dated August 23, 2003. All the four appeals pertain to property No.2522/10 (3rd floor), front of plot No.3/13-B, Asaf Ali Road, New Delhi. In terms of the Delhi High Court Rules and Orders as applicable on the date the aforesaid appeals were filed, they were placed before a Division Bench for hearing and disposal. It is not in dispute that in two of those appeals being RFA No.732/2003 & RFA No.855/2003, substantial arguments were heard by the Division Bench. However, before any final order could be passed, the Rules saw an amendment. The same came into operation with effect from January 01, 2009. The amendment relevant for our purpose is as under:-

“Part-B
JURISDICTION OF A SINGLE JUDGE AND OF
BENCHES OF THE COURT

1. Cases ordinarily to be heard by a single Judge. – Subject to the provisos hereinafter set forth the following classes of cases shall ordinarily be heard and disposed of by a Judge setting alone:-
 - (i) a motion for the admission of – (omitted)
 - (a) a first appeal from the decree of a subordinate Court, or
 - (b) an appeal from order under the Code of Civil Procedure and under any Act of the Central or State Legislature unless there is any thing of the contrary in the said act, or
 - (c) a second appeal irrespective of the value of the subject matter.”

What is also relevant is Section 2 of the notification dated December 23, 2008 whereby the aforesaid amendment was made. It runs as under:-

“2. These amendments shall also apply to pending appeals other than those in which regular hearing has actually commenced before the coming into force of these rules.”

The amended Rule reproduced above is clear and unambiguous and needs no interpretative skill. Since two of the appeals were actually heard, if not fully at least substantially, they were to remain with the Division Bench and the two other appeals, even though were not heard, were at least integrally connected with the remaining two. The Division Bench in its wisdom by order dated January 30, 2009 directed all the four appeals to be heard by a Single Judge. The order so passed by the Division Bench reads as under:-

“x x x x x x

1. The four captioned appeals are interconnected and arise out of the same suit.

2. Whereas substantial arguments were heard in RFA No.732/2003 and RFA No.855/2003; arguments had yet to commence in the two connected appeals being RFA No.878/2003 and RFA No.912/2003.

3. Since RFA No.878/2003 and RFA No.912/2003 have to be fully heard; the appeals are directed to be listed before a Single Bench as per roster. We note that with effect from the current calendar year the jurisdiction to hear regular first appeals arising out of judgments and decrees passed by Courts subordinate to the Delhi High Court is vested with a Single Judge and not a Division Bench.

4. List for directions before a learned Single Judge as per roster on 12.2.2009.....”

Consequent to the passing of the aforesaid order, the appellants moved an application bearing C.M. No.2475/2009 dated February 12, 2009 in RFA No.855/2009 and therein they prayed that the appeals be directed to be heard by the same Bench which had substantially heard the matters. In another appeal bearing RFA No.732/2003 also, similar application was filed. In view of the applications, the learned Single Judge vide order dated March 16, 2009 passed in RFA No.732/2003 directed the appeals to be listed before the Division Bench, subject to the orders of Hon'ble the Chief Justice on March 20, 2009. Accordingly, the matter was again listed before the Division Bench and the Division Bench this time passed the following order:-

“x x x x x x

1. In our order dated 30.1.2009 we had recorded as under:-

1. The four captioned appeals are interconnected and arise out of the same suit.

2. Whereas substantial arguments were heard in RFA No.732/2003 and RFA No.855/2003; arguments had yet to commence in the two connected appeals being RFA No.878/2003 and RFA No.912/2003.

3. Since RFA No.878/2003 and RFA No.912/2003 have to be fully heard; the appeals are directed to be listed before a Single Bench as per roster. We note that with effect from the current calendar year the jurisdiction to hear regular first appeals arising out of judgments and decrees passed by Courts subordinate to the Delhi High Court is vested with a Single Judge and not a Division Bench.

4. List for directions before a learned Single Judge as per roster on 12.2.2009.

2. It is not in dispute that arguments in the two connected appeals being RFA No.887/2003 and RFA No.912/2003 had yet to commence. The said two appeals have to be fully heard.

3. With reference to the notification dated 23.12.2008 amending the rules relating to regular first appeals, we note that it finds mentioned therein that the amendments shall not apply to pending appeals in which regular hearing has commenced.

4. Thus, technically it can be urged that pertaining to RFA No.732/2003 and RFA No.855/2003 the pre-amended rules would apply.

5. But today we are faced with another problem.

6. The notes of arguments which we had noted during hearing of the two appeals i.e. RFA No.732/2003 and RFA No.855/2003 are missing from the files of the two appeals, meaning thereby, even the said appeals would have to be reheard.

7. To put it differently, hearing afresh would have to be held in the said two appeals as well.

8. To get over the impasse, we pass a formal order releasing RFA No.732/2003 and RFA No.855/2003 where arguments had substantially concluded. Needless to state arguments in RFA No.878/2003 and RFA No.912/2003 had not even commenced.

9. List as per roster before a Single Bench on 24.3.2009.....”

Shri Ram Jethmalani, the learned Senior Advocate who is representing the appellants expressed his dissatisfaction over the orders passed by the Division Bench on January 30, 2009 and March 20, 2009. He submitted that the orders so passed were against the letter and spirit of the amended Rules. His grievance was that at least two of the connected appeals having been heard by the Division Bench and the remaining two appeals being the integral part of the said appeals and all the four appeals having emanated from the

same judgment and decree, the Division Bench could not direct those appeals to be heard by a Single Bench. The learned Senior Advocate wanted that I should ignore the direction, and, following the Rules, should direct the appeals to be placed before the Division Bench.

The learned Senior counsel for the respondents did not find anything objectionable or legally wrong in the orders of the Division Bench. His argument was that it was well within the jurisdiction of the Division Bench to take note of the fact that at least two appeals had not been heard.

I do feel that what I am being asked by Mr. Jethmalani, the learned Senior Advocate is to comment upon the legality of the order passed by the Division Bench and to override it. There are norms of judicial discipline, written as well as unwritten. The order passed by the Division Bench is inspired by the amended Rule. Whether the interpretation is well-founded or is based on wrong assumption, is not for me to comment upon, not even if I may have reservations. As a Single Judge, I feel bound and if I remain so bound, I follow judicial discipline. Mr. Jethmalani is an astute lawyer. It is not for me to suggest the remedy. However, surely, or at least this is what I feel, it lies somewhere else. The application is dismissed.

List the appeal for directions on May 25, 2010.

REKHA SHARMA, J.

MAY 05, 2010
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