

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 11.03.2014

FAO(OS) 395/2013

ZENITH MEDIA LIMITED

(Now MEDIA EDGE CIA INDIA PVT. LTD.)

..... Appellant

versus

AMRIT PAL SINGH

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Atul Sharma, Mr Milanka Choudhury, Mr Sarojanand Jha,
Mr Abhishek Sharma, Mr Yash Srivastava and Ms Satakshi Sood.

For the Respondent : Mr Manish Kohli and Mr Pradeep Shukla.

CORAM:

**HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING
CHIEF JUSTICE**

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, ACJ (ORAL)

1. This appeal is directed against the order dated 15.07.2013 passed by a learned Single Judge of this court in IA No.8006/2012 in CS(OS) No.1361/2006. The said application was filed by the defendant/appellant under Order 14 Rule 5 of the Code of Civil Procedure, 1908 (in short 'CPC') for framing of an additional issue. The said application was rejected by the learned Single Judge by virtue of the impugned order dated 15.07.2013. While doing so, the learned Single Judge had observed and noted the fact

that the evidence of the plaintiff/respondent had been closed way back on 21.05.2011. Furthermore, the order dated 22.11.2011 also recorded the fact that the defendant/appellant had made a statement that the defendant has no evidence to lead in the matter. Since the plaintiff had already concluded his evidence, the matter was listed for final disposal on 14.03.2012. The above mentioned application (IA No.8006/2012) under Order 14 Rule 5 CPC for framing an additional issue was filed much later on 26.04.2012. The learned Single Judge rejected the said application by observing that entertaining such an application would amount to further delaying the entire proceedings and would constitute an abuse of the process of court.

2. The appellant/defendant being aggrieved by the said order has preferred the present appeal under Section 10 of the Delhi High Court Act, 1966. It is an admitted position that an order refusing to frame an additional issue is not an appealable order under Order 43 Rule 1 CPC. It is for this reason that the appellant/defendant has preferred the present appeal invoking the provisions of Section 10 of the Delhi High Court Act, 1966. Section 10(1) of the Delhi High Court Act, 1966 reads as under:-

“Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-Section (2) of Section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.”

3. A plain reading of the above provision indicates that where a Single Judge of this court exercises ordinary original civil jurisdiction conferred by Section 5(2) of the said Act, an appeal would lie from a “judgment” of a Single Judge to a Division Bench of this court. The whole issue in the

present case is – whether the order refusing to frame an additional issue on an application made under Order 14 Rule 5 CPC would constitute a “judgment” for the purposes of Section 10 of the Delhi High Court Act, 1966? The learned counsel for the appellant referred to the decision of the Supreme Court in the case of **Shah Babulal Khimji v. Jayaben D.Kania and another**: AIR 1981 SC 1786 to contend that the order impugned herein was an order of the nature referred to as an ‘intermediary or interlocutory judgment’ in the said decision of the Supreme Court. It was contended by him that the impugned order has the quality of finality and, therefore, it would clearly be a judgment. In order to further buttress this argument, the learned counsel for the appellant submitted that the issue, that was sought to be framed as an additional issue, concerns Order 2 Rule 2 CPC and would require the reading of evidence as observed by the Supreme Court in **Gurbux Singh v. Bhooralal**: AIR 1964 SC 1810. Consequently, it was submitted that the right to lead evidence would be lost in case the issue is not framed and for that reason the impugned order rejecting the prayer for framing of an additional issue on Order 2 Rule 2 CPC would amount to an order which would have the quality of finality and, therefore, ought to be considered as a judgment in terms of the decision in *Shah Babulal Khimji (supra)*.

4. The learned counsel for the appellant has also placed reliance on two decisions, one of the High Court of Uttarakhand and the other of the High Court of Jammu and Kashmir:-

1. **Lamboda Eastern Telecommunication and Ors. v. Acme Tele-power Pvt. Ltd. and Anr.**: AIR 2010 UTR 79.

2. **Brij Mohan Bakhshi v. Amar Nath Bakhshi and Ors.:** AIR 1980 J&K 54.

5. On the other hand, the learned counsel for the respondent submitted that the issue sought to be raised in the present appeal has been squarely dealt with in a Full Bench decision of the Madras High Court in **T.V.Tuljaram Row v. M.K.R.V. Alagappa Chettiar:** (1912) ILR 35 Madras

1. The question that was considered, on a reference, by the Full Bench of the Madras High Court was – whether an appeal lies to the court from an order of a Judge on the Original Side declining to frame an issue which is asked for by one of the parties to the suit? It is this very question which arises for consideration before us. After examining the issue at length, the Full Bench came to the conclusion that no appeal lies from an order of a Single Judge on the Original Side declining to frame an issue which was asked for by one of the parties to the suit. In other words, the Full Bench of the Madras High Court held that an order of the kind impugned before us was not a judgment and, therefore, no appeal would lie therefrom in terms of Clause 15 of the Letters Patent of the Madras High Court. In that clause also the word “judgment” needed interpretation. The learned counsel for the respondent also drew our attention to the decision of the Supreme Court in ***Shah Babulal Khimji*** (*supra*) where this decision of the Full Bench of the Madras High Court has been referred to in detail and while doing so the Supreme Court observed as under:-

“We would like to adopt and approve of generally the tests laid down by Sir White, C.J. in Tuljaram Row’s case (1912 ILR 35 Mad 1) (*supra*), (which seems to have been followed by most of the High Courts) minus the broader and the wider attributes adumbrated by Sir White, C.J. or

more explicitly by Krishnaswamy Ayyar, J. as has been referred to above.”

6. From the above extract it is evident that the tests applied in *T.V.Tuljaram Row* (*supra*) have been approved by the Supreme Court “minus the broader and wider attributes”. In other words, a narrower interpretation has been adopted by the Supreme Court in *Shah Babulal Khimji* (*supra*). But, the present case does not even fit into the broader view taken by the Madras High Court in *T.V.Tuljaram Row* (*supra*). Therefore, there is no question of it being regarded as a judgment in the narrower view taken by the Supreme Court in *Shah Babulal Khimji* (*supra*).

7. We may also observe that the impugned order would not be a judgment for the purposes of Section 10 of the said Act because of the provisions of Section 105 of the CPC. Section 105 of the CPC reads as under:-

“**Other orders.** – (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.”

8. It is evident that while no appeal would lie from an order rejecting an application under Order 14 Rule 5 CPC because it is not a judgment, the same can be challenged as a ground of objection in the memorandum of

appeal from the decree which may be passed in the suit. Therefore, it is not as if there are no avenues open to the appellant/defendant.

9. In view of the foregoing, it is not necessary for us to examine the decision of the Uttarakhand High Court and that of the High Court of Jammu and Kashmir inasmuch as we have relied entirely on the decision of the Supreme Court in *Shah Babulal Khimji* (*supra*) and its approval of the decision of the Full Bench of the Madras High Court in *T.V.Tuljaram Row* (*supra*). Consequently, the present appeal is not maintainable and the same is dismissed as such but with no order as to costs.

BADAR DURREZ AHMED, ACJ

SIDDHARTH MRIDUL, J

MARCH 11, 2014

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