

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

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Judgment Reserved on: 10th March, 2015

Judgment Delivered on: 30th April, 2015

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FAO(OS) 82/2015

VLS FINANCE LTD

..... APPELLANT

VERSUS

SOUTHEND INFRASTRUCTURE PVT LTD & ANR

..... RESPONDENTS

Advocates who appeared in this case:

For the Appellant:

Mr. Ravi Gupta, Senior Advocate with Mr. Nikhil Rohatgi, Mr. Samit Khosla, Mr. Chetan Sharma and Mr. Ashok Kr. Sharma, Advocates.

For the Respondent:

Mr. Ashwani Kumar Matta, Senior Advocate with Mr. Mohit Auluck, Ms Manjula Baxla and Mr. Raghav, Advocates for respondent No.1.

Mr. Chetan Sharma, Senior Advocate with Mr. Vijay K. Sondhi, Mr. Venancio D' Costa, Mr. Ashish Kr. Singh and Mr. Harshed Pathak, Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The controversy as of now that has arisen is whether from the impugned order an intra court appeal would lie under section 10 of the Delhi High Court Act, 1966 (hereinafter referred to as the Act) or not?

2. The impugned order is not an order from which an appeal is specifically provided either under the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) or under any other special law.

3. An objection was raised by the respondents with regard to the maintainability of the appeal under section 10 of the Act and it was contended that assuming though not admitting, even if the impugned order satisfies the test as laid down in **Shah Babulal Khimji v. Jayaben D. Kania, (1981) 4 SCC 8**, in other words, it affects vital and valuable rights of the parties and decides matters of moment and thus an appeal would lie from the order of the learned Single Judge, the appeal in its present form would not be maintainable.

4. The parties were heard on this limited question and the present order is being passed deciding the issue of maintainability of the appeal in its present form. The examination is limited to the maintainability of the appeal under section 10 of the Act and we are not examining whether an appeal under clause 10 of the Letters Patent would be maintainable or not.

5. Normally, where an intra court appeal is maintainable, the form would not be very relevant, however, in the context of the Delhi High Court, it has relevance, because as per the division of rosters, appeals under section 10 of the Act and appeals under clause 10 of the Letters Patent are to be heard by different benches.

6. The controversy as to which are the orders from which an intra court appeal would lie under section 10 of the Act and which are the orders from which an appeal would lie under clause 10 of the Letters Patent has been put to rest by the judgment of a full bench of this court in **Jaswinder Singh & another v. Mrigendra Pritam Vikramsingh Steiner & others**, 196 (2013) DLT 1 (FB). The Full Bench has laid down that, in respect of an order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order under section 104 read with Order 43 of the said Code which meets the test of a “judgement” and which decides matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned as per the parameters laid down in **Shah Babulal Khimji case** (*supra*) by the Supreme Court, an appeal to the Division Bench would exclusively lie under section 10 of the said Act and not under clause 10 of the Letters Patent.

7. To ascertain as to whether an order falls in one category or the other, it is necessary to examine as to in exercise of which jurisdiction, the order has been passed. This becomes relevant in view of the history of the court system in India. The same has been very succinctly dealt with by the Full Bench in **Jaswinder Singh case** (*supra*). For the purposes of resolution of the controversy that has

arisen, it would be appropriate to briefly refer to the evolution of the system of courts in India.

8. There is a distinction between the jurisdiction of the courts that were established in the presidency towns during the British era and those that were situated outside those areas. Further, distinction has occurred on account of what are called Chartered High Courts and Non-Chartered High Courts.

9. A brief summary of the history as enunciated in **Jaswinder Singh case** (*supra*) shows that the East India Company, was established by the Charter of Queen Elizabeth I in 1600. Though the Company was established for purposes of trading only, it was also empowered to make laws for the good governance of the Company, its employees, officers, etc., and for the better advancement and continuance of trading and to impose punishments and fines in enforcement of those laws.

10. As the East India Company established factories and acquired territories in India, it was empowered to raise an army, make war and peace and exercise governmental functions for the protection of its territories and for further acquisition.

11. In 1765, the Company obtained the grant of Diwani of Bengal, Bihar and Orissa from the Emperor Shah Alam. The Diwani was not at once transferred to the Crown and the Company continued with its

possession, without prejudice to the undoubted sovereignty of the Crown. The Company remained in possession of territories “in trust for His Majesty”.

12. With the growth of the East India Company, it became necessary to establish Courts of Justice within the territories under the control of the Company. The Letters Patent of 1726 granted by King George I, established and constituted three Courts of record known as ‘Mayor's Court’ (consisting of a Mayor and nine (9) Aldermen) in Fort William in Bengal, in Madras and in Bombay. The right of appeal was to the Governor General in Council. The Letters Patent encouraged not only the British subjects but also subjects of princes and natives to resort to and settle the disputes in both civil causes and criminal matters.

13. These Letters Patent of 1726 were surrendered by the East India Company to King George II and the Company obtained fresh Letters Patent in 1753 by which the Mayor's Courts were limited in their civil jurisdiction to suits between persons who were not natives and suits between natives were directed not to be entertained by them unless by consent of the parties.

14. The East India Company after securing the Diwani of Bengal, Bihar and Orissa in 1765 set up courts of civil and criminal jurisdiction for the Moffusil. The Moffusil Diwani Adalat was

established for administration of civil justice, with a right of appeal to the Sadar Diwani Adalat, Calcutta. These Courts were not the King's Courts but were the Company's Courts established by the Company on the authority derived from the Mughal Emperor. This had nothing to do with the Mayor's Court or its successors.

15. The Regulating Act, 1773 was enacted with the object of imposing control over the Company and its servants both in England and in India. It provided for the appointment of the Governor General and Council in Bengal and empowered the Crown by Charter to erect and establish a Supreme Court at Fort William with full power and authority to exercise and perform all civil, criminal, admiralty and ecclesiastical jurisdictions in the Presidency towns. Pursuant to this Act, King George III issued a Charter establishing a Court of Record called the “Supreme Court of Judicature at Fort William in Bengal” dated 26th March, 1774. The jurisdiction of the Supreme Court extended throughout the Presidency towns. The Supreme Court was, thus, a Crown's Court. Subsequently, the Supreme Courts at Madras and Bombay were established by King George II on 26th December 1800 and 8th December 1823 respectively. With the result that while, the then Supreme Courts exercised jurisdiction in the Presidency towns, the then Sadar Courts exercised jurisdiction in the Moffusils.

16. After the Sepoy Mutiny of 1857, the British Crown took over the territories and the Government of British India from the Company

by the Government of India Act, 1858 and, thus, India came to be governed directly by and in the name of the Crown. In 1861, the Indian High Courts Act was passed by the British Parliament which authorized “Her Majesty Queen Victoria” by Letters Patent to erect and establish High Courts in the three presidencies which were to “have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same presidency abolished under this Act at the time of abolition of such last mentioned Courts.” Thus, the Supreme Courts and the Courts of Sadar Diwani Adalat and Sadar Nizamat (Faujdari) Adalat were abolished.

17. It is in exercise of powers under the Indian High Courts Act, 1861, that the Letters Patent of 1862 was issued establishing the High Courts in the three Presidency towns of Calcutta, Bombay and Madras. In 1865, the Indian High Courts Act was amended so as to authorize the Governor General in Council to alter the local limits of jurisdiction of High Courts and to exercise jurisdiction beyond the limits of the Presidency. This is insofar as the Presidency towns are concerned.

18. By an Act by the Governor General of India in Council (Act No. xxiii of 1865) the then Chief Court of Punjab was established and the Provinces of Punjab and Delhi were subject to its jurisdiction. This position continued till the Letters Patent constituting the High Court

of Judicature at Lahore dated 21st March 1919 was issued by which the High Court at Lahore was established for the provinces of Punjab and Delhi.

19. The Punjab High Court after 1947, continued to be governed by this Letters Patent and the Union Territory of Delhi continued to be within the jurisdiction of the Punjab High Court. Clause 9 of the Letters Patent conferred extraordinary original civil jurisdiction on the High Court.

20. The significant difference between the original civil jurisdiction conferred in the Presidency towns and the Lahore High Court is that on the establishment of the Chartered High Courts in the Presidency towns there were two kinds of original jurisdiction which were transferred to it - (i) as was being exercised by the Supreme Court in the Presidency towns; (ii) as was being exercised by the Sadar Courts. On the other hand when the Non-Chartered High Courts were established by different Letters Patent including the Lahore High Court it was only the second original jurisdiction which was transferred. The Supreme Courts established in the Presidency towns prior to the establishment of the Chartered High Courts were exercising the ordinary civil jurisdiction in the territories of the Presidency towns while in the Mofussil, the principal Courts of original jurisdiction were the District Courts. On the establishment of City Civil Courts in the Presidency towns, the lower pecuniary

jurisdiction from the ordinary civil jurisdiction of the Chartered High Courts came to be vested in those city civil courts.

21. The Delhi High Court was constituted under the Delhi High Court Act, 1966. It being one of the newer High Courts, it had the benefit of being constituted under a legislation of the Indian Parliament. In terms of section 5(1) of the said Act, the Delhi High Court has been conferred with all such original, appellate and other jurisdiction, as under the law in force immediately before being exercised in respect of the territories by the High Court of Punjab. However, the Punjab High Court did not have any ordinary original civil jurisdiction. Therefore, section 5(2) of the said Act which begins with a non obstante clause conferred an additional ordinary original civil jurisdiction in every suit the value of which exceeded Rs. 25,000.00, on the Delhi High Court. This limit has been subsequently revised and stands at Rs. 20.00 lakhs now.

22. Section 10(1) of the said Act lays down that ordinary original civil jurisdiction having been conferred in terms of section 5(2) of the said Act and provides for an appeal before a Division Bench of the Delhi High Court from an order of the learned Single Judge of this Court.

23. In terms of section 16 of the said Act, all proceedings pending in subordinate courts in relation to any civil suit referred to as per sub-

section (2) of section 5 of the said Act was to stand transferred to the High Court of Delhi.

24. The Act therefore assumed ordinary original civil jurisdiction exercised by the subordinate courts beyond a pecuniary limit and conferred it on the Delhi High Court under section 5(2).

25. When a judgement is delivered by a Single Judge exercising the jurisdiction inherited from the Punjab High Court under section 5(1) of the Delhi High Court Act, then the appeal against it lies under clause 10 of the Letters Patent; and on the other hand, when a Single Judge delivers a judgement in exercise of the ordinary original civil jurisdiction obtained by this Court from the Subordinate Court under section 5(2) of the Delhi High Court Act, then the appeal lies under section 10(1) of the Act¹.

26. There is a historical distinction between original jurisdiction exercised by two groups of High Courts in India. This corresponds to the jurisdiction exercised by the Courts preceding these two groups of High Courts. The then Supreme Courts exercised jurisdiction in the Presidency Towns and the then Sadar Courts exercise jurisdiction in the Mofussil. When the Supreme Courts and Sadar Courts were abolished, on one hand their two different kinds of original jurisdiction were transferred to what may be called the Non-Chartered

¹ *Public Trustee v. Rajeshwar Tyagi*, ILR (1973) 1 Delhi 29 : AIR 1972 Delhi 362

High Courts by different Letters Patent, which were substantially different from the Letters Patent of the Chartered High Courts. The former Supreme Courts themselves exercised ordinary civil jurisdiction in the Presidency Towns. In the Mofussil, however, the principal courts of original jurisdiction were the District Courts. The Chartered High Courts succeeding the Supreme Courts in the Presidency Towns obtained an ordinary original civil jurisdiction till then exercised by the Supreme Courts. This continued till city Civil Courts were established in the Presidency Towns taking away the lower pecuniary jurisdiction from the ordinary civil jurisdiction of these Chartered High Courts in the Presidency Towns. The ordinary civil jurisdiction was possessed by the Supreme Courts and the Chartered High Courts from the very beginning. Later, a part of it was transferred to the City Civil Courts, which corresponded to the District Courts in the Mofussil.²

27. The distinction between the Letters Patent issued qua the Chartered High Courts and the Non-Chartered High Courts is premised on the existence of the ordinary civil jurisdiction being possessed by the Supreme Court and thereafter by the Chartered High Courts from the very inception. Thus, the High Courts established outside the Presidency towns inherited only the appellate jurisdiction

² *Aswini Kumar Ghosh v. Arabinda Bose*, (1953) SCR 1: AIR 1952 SC 369

of the Sadar Courts, while the principal Courts of original jurisdiction continued to be the District Courts.

28. The Letters Patent of other High Courts did not give any ordinary original civil jurisdiction to these Courts because none was inherited from the Sadar Courts. The extraordinary civil jurisdiction was possessed by the Non-Chartered High Courts because every High Court had the power to transfer to itself a suit from a subordinate court within its territorial jurisdiction.

29. The following four categories constitute appellate jurisdiction of the Delhi High Court:³

- a. Firstly, appeals under Section 10 of the DHC Act but they are limited only to those judgments referable to Section 5(2) thereof.
- b. Secondly, appeals under the Code of Civil Procedure.
- c. Thirdly, appeals under different statutes, which itself provides for an appeal.
- d. Fourthly, appeals under Clause 10 of the Letters Patent.

30. The establishment of the ordinary original civil jurisdiction in the Delhi High Court is a sequitur to the statutory provisions of the said Act. It is in terms of section 5(2) of the said Act, that ordinary original civil jurisdiction was conferred on the Delhi High Court for suits exceeding Rs. 25,000.00 (now the limit is Rs. 20.00 lakhs).

³ *C.S. Agarwal v. State*, 2011 VII AD (Delhi) 265(FB)

When such ordinary original civil jurisdiction is exercised by a learned Single Judge of this Court, the appeal is provided for under section 10(1) of the said Act. Sub-Section (2) of section 10 of the said Act has been made subject to the provisions of sub-section (1), and provides that the law in force immediately before the appointed day relating to the powers of the Chief Justice, Single Judges and Division Courts of the High Court of Punjab would apply in relation to the High Court of Delhi.⁴

31. In respect of an order passed by a Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order under section 104 read with Order 43 of the said Code which meets the test of a “judgement” that decides matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned as per the parameters laid down in **Shah Babulal Khimji case** (*supra*) by the Supreme Court, an appeal to the Division Bench would exclusively lie under Section 10 of the said Act and not under Clause 10 of the Letters Patent.⁵

32. Keeping in view the above legal position, we have to now examine whether the impugned order has been passed in exercise of ordinary original civil jurisdiction under section 5(2) of the Act. Since we are called upon in the first instance to examine the maintainability

⁴ *Jaswinder Singh case* (*supra*)

⁵ *Jaswinder Singh case* (*supra*)

of the appeal in its present form i.e., an appeal under section 10 of the Act, we are narrating only the undisputed brief facts that are relevant for the said purpose. We do not propose to examine the case of the appellant on merits.

33. The facts that emerge from the impugned order are that the Appellant had entered into some property transaction for the development of a plot of land measuring 34,275 square meters bearing No.C-20, 1A/10, Block C, Sector 62, NOIDA. The aforesaid plot was to be developed for IT and IT enabled services. The Appellant had entered into this agreement with M/s BMS IT Institute Private Limited. There were some disputes between these two contracting parties which led to filing of a petition under Section 9 of the Arbitration and Conciliation Act, 1996 by the Appellant VLS Finance Limited against BMS IT Institute and eleven other parties.

34. The respondent Nos. 2 to 10 in the said petition were individuals and a private company while respondent Nos. 11 & 12 were two other companies. The respondents Nos. 2 to 9 were alleged to be the individuals/contractors of respondent No.1/company. It was alleged that apart from these individual respondents, being the contractors/office bearers of respondent No.1/company, they were also having the controlling effect in respect of other three companies who were impleaded as respondent Nos. 10 to 12. These companies included respondent No.1 herein/Southend Infrastructure Pvt. Ltd.

having its office at B – 319, which is the property in question. A restraint order in respect of the subject property was issued on 09.01.2014 in the section 9 petition restraining the respondent Nos. 2 to 12 therein from alienating, selling, transferring, mortgaging, encumbering, and disposing of or in any manner dealing with their immovable property.

35. On 04.09.2012, the learned Single Judge was informed that the affected parties had sought arbitration of their disputes and consequently there was no need to continue with the petition and it could be treated as disposed of. The learned Single Judge after hearing the learned counsel for the parties made the interim order dated 27.04.2012 absolute during the pendency of arbitration proceedings with the direction that the said order shall continue to be in operation till the time the same is varied or modified by the learned arbitrator on an application being filed by any of the parties.

36. The appellant filed the subject petition under Article 215 of the Constitution of India read with section 2(b) and section 12 of the Contempt of Courts Act, 1971 alleging that the aforesaid restraint order had been wilfully and deliberately violated by Respondent No. 1 herein i.e. Southend Infrastructure Pvt. Ltd. by executing a conveyance deed in favour of Respondent No. 2 (Wonder Space Properties Pvt. Ltd) on 10.06.2013 in respect of property bearing No. B – 319, Okhla Industrial Area Phase I, New Delhi.

37. On 09.01.2014 while issuing notice to the Respondents, the learned Single Judge issued an ad interim order directing that the respondents shall maintain status quo as of that date in respect of property bearing No. B – 319, Okhla Industrial Area, Phase I, New Delhi.

38. An application being CM No. 4181/2014 was filed by the respondent No.2 seeking modification/variation of the ad interim order passed by the court on 09.01.2014. By the impugned order the learned Single Judge has vacated the interim order dated 09.01.2014.

39. To resolve the issue raised by the Respondents of maintainability of the appeal in its present form, we have to determine as to whether the impugned order has been passed in exercise of ordinary original civil jurisdiction under section 5(2) of the Act or not? Only in case jurisdiction has been exercised under section 5(2) of the Act, an appeal under section 10 of the said Act would lie.

40. As stated hereinabove, the Delhi High Court exercises ordinary original civil jurisdiction under section 5(2) of the Act beyond a pecuniary limit of Rs. 20,00,000/- and below the said pecuniary limit the same is exercised by the subordinate courts.

41. The impugned order has been passed by the learned Single Judge in proceedings initiated under the Contempt of Courts Act, 1971.

42. To ascertain whether the Single Judge exercises ordinary original civil jurisdiction while exercising jurisdiction under Contempt of Courts Act, we would have to examine the history of law of contempt in India.

43. Prior to 1926, the law of contempt in India followed the British corresponding law which regulated superior courts of record. The High Courts in India being courts of record exercised the power of contempt.

44. The first legislation to deal with contempt of courts in our country was the Contempt of Courts Act, 1926. It was enacted to define and limit the powers of certain courts in punishing for contempt of courts. The Contempt of Courts Act, 1926, gave statutory powers to the High Courts of Judicature established by Letters Patent to punish for the contempt of court of the courts subordinate to them. The Contempt of Courts Act, 1926, was subsequently amended in 1937 to make it clear that the limits of punishment provided in the Act related not only to contempt of subordinate courts but also to all cases. The Contempt of Courts Act, 1952, repealed the Contempt of Courts Act, 1926 and consolidated the provisions relating to the law of contempt so as to make it applicable to the High Courts. It recognised, defined and limited the powers that already existed. The High Courts were conferred jurisdiction to inquire into and try contempt of itself or of any Court subordinate to it.

45. However, the scope of the Contempt of Courts Act, 1952 Act was not wide enough to define as to what constituted contempt of the Court, apart from certain other issues. The Contempt of Courts Act, 1952, was repealed and replaced by the Contempt of Courts Act, 1971. Contempt Power is exercised by all courts when contempt is committed in *facie curiae* and by the superior courts on their own behalf and on behalf of the courts subordinate to them if committed outside the court. Formerly, it was regarded as inherent in the powers of a court of record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. ⁶

46. The contempt jurisdiction is not an ordinary original civil jurisdiction vested in the High Court by virtue of section 5(2) of the Delhi High Court Act. Thus, the question arises whether an order passed by a learned Single Judge in exercise of the contempt jurisdiction and not specifically appealable under the Contempt of Courts Act, 1971, even if it satisfies the tests laid down in **Shah Babulal Khimji** (*supra*) would be appealable under section 10 of the Delhi High Court Act?

47. The impugned order has been passed by the learned Single Judge in proceedings initiated by the appellant under the Contempt of Courts Act, 1971. The maintainability of the appeal in its present form

⁶ *Sammhu Nath Jha v. Kedar Prasad Sinha*, (1972) 1 SCC 573

has to be tested with regard to the jurisdiction exercised by the learned Single Judge.

48. The learned Senior Counsel for the appellant had contended that the appellant had initiated the contempt proceedings as the respondent had violated the injunction granted under section 9 of the Arbitration and Conciliation Act, 1996 and thus the same should be construed as proceedings continuing under the Arbitration and Conciliation Act. We are unable to agree with the contention of the learned counsel in as much as the appellant had not filed any application in the section 9 proceedings but had invoked the contempt jurisdiction of this court. Even otherwise, the proceeding under section 9 has already terminated and is no longer pending.

49. Further, the contention of the learned Senior Counsel for the appellant that the impugned order is akin to an order under Order 39 Rule 4 of the Code of Civil Procedure also cannot be accepted as the initial proceedings were under the Arbitration and Conciliation Act, 1996 which is a separate and a complete code in itself and further more the orders under Order 39 Code of Civil Procedure are to enure during the pendency of the lis/suit and in the present case the petition under section 9 had already been disposed of and no proceedings are pending.

50. It is not in issue that the jurisdiction exercised by this court while entertaining a petition under section 9 and 34 of the Arbitration and Conciliation Act, 1996, in respect of matter within its pecuniary jurisdiction, is its ordinary original civil jurisdiction vested in it by virtue of section 5(2) of the Delhi High Court Act.

51. In the present case, the appellant had not filed any petition/application under the Arbitration and Conciliation Act, but had filed a petition under the Contempt of Courts Act, and had thus approached this court in exercise of its contempt jurisdiction and not in exercise of its ordinary original civil jurisdiction. The interim injunction granted by the learned Single Judge while issuing notice in the contempt petition has been vacated by the impugned order. The ordinary original civil jurisdiction vested in the Delhi High Court under section 5(2) of the said Act is beyond a particular pecuniary limit and below the said limit, the same is vested in the subordinate court. The contempt jurisdiction is only vested in the High Court and is not subject to any pecuniary limitations. Clearly, the order has not been passed in exercise of ordinary original civil jurisdiction vested in this court by virtue of section 5(2) of the Delhi High Court Act and as such, no appeal would lie under section 10 of the said Act.

52. In view of the above, we hold that the appeal filed by the appellant is not maintainable in its present form under section 10 of the Delhi High Court Act. The appeal is accordingly dismissed but

with no orders as to costs. We make it clear that we have only examined the question of the maintainability of the appeal under section 10 of the Act and we have not examined whether an appeal under clause 10 of the Letters Patent would be maintainable or not and further we have not examined the merits of the contention of either party with regard to the impugned order.

SANJEEV SACHDEVA, J.

APRIL 30, 2015
HJ

BADAR DURREZ AHMED, J.

