

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 456 of 2019**

(Arising out of order dated 23.07.2019 passed in Writ Petition (227) No.420 of 2019 by the learned Single Judge)

Ashutosh Khatri S/o Late Dr. M.L. Khatri, Aged About 49 Years Caste Kshatriya, Occupation - Business, R/o Imlipara, Near Municipal Corporation Complex, Nagar Ambikapur, District Surguja Chhattisgarh.

---- Appellant**Versus**

1. Pankaj Khatri S/o Late M.L. Khatri Aged About 44 Years Occupation Agent of Indian Life Insurance, R/o Imlipara, Near Municipal Corporation Complex, Nagar Ambikapur, District Surguja Chhattisgarh.
2. State of Chhattisgarh Through The Collector, Ambikapur, District Surguja Chhattisgarh.

---- Respondents

For Appellant	: Shri Sushil Dubey, Advocate.
For Respondent/State	: Shri Sudeep Agrawal, Deputy Advocate General.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

P. R. Ramachandra Menon, Chief Justice

15.10.2019

1. Interference declined by the learned Single Judge to interdict the order passed by the sub-ordinate Court in rejecting the interlocutory application filed by the Appellant herein to decide issues No.3 and 4 raised by the said Court as a 'preliminary issue', is put to challenge in this appeal.

2. Apart from the merits of the case, there is a legal question as to whether the appeal itself is maintainable and hence when the matter came up for consideration yesterday, we raised this question and heard the learned counsel for the Appellant today, in this regard as well.

3. The sequence of events as follows :

A suit for partition was filed by the 1st Respondent, who is none other than the brother of the Appellant, before the trial Court where the property was valued at Rs.55,800/-. On entering appearance, the Appellant (1st Defendant), file written statement, pointing out that valuation for the purpose of jurisdiction and Court fee was not correct and that the property was having value of more than Rs.1 Crore. After completion of pleadings, the trial Court raised issues No.1 to 4; among which issues No.3 and 4 were connected with the dispute raised by the Appellant herein as to the valuation of the property. Thereafter, an interlocutory application was filed by the Appellant seeking to consider issues No.3 and 4 (with regard to the valuation for the purpose of Court fee and jurisdiction) to be decided as preliminary issues before proceeding with the matter. The interlocutory application was considered and the prayer was turned down by the trial Court holding that, it required evidence and hence it will be considered after taking evidence.

4. Met with the situation, the Appellant approached this Court by filing writ petition with the following prayers :-

“10.1 That, this Hon'ble Court may kindly be pleased to set- aside the impugned order dated 22.04.2019 (Annexure P/1) passed by learned Trial Court and

further be pleased to direct the learned trial Court to decide the issues regarding valuation of suit property, payment of court fee and pecuniary jurisdiction as preliminary issues, in accordance with law.

10.2 That any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the cost of the petition may be given.”

5. The matter was heard elaborately and the learned Single Judge held that the order passed by the learned Single Judge was not one which was finally deciding the issue on a question of law, so as to have it considered and finalised at the first instance. It was also observed that evidence was required to be taken as to the market value and such other relevant aspects, to decide whether the suit was properly valued or not for the purpose of Court fee and jurisdiction. Accordingly, interference was declined and the writ petition was dismissed, which is under challenge in this appeal.
6. Right of appeal is a creation of the statute and it is sought to be pursued in terms of Section 2(1) of the High Court (Appeal to Division Bench) Act, 2006 ('the Act', *in short*). Section 2 of the Act reads as follows :-

“2. Appeal to the Division Bench of the High Court from a Judgement or order of one judge of the High Court made in exercise of original jurisdiction.-(1) An appeal shall lie from a judgement or order passed by one judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

7. By virtue of the mandate of Section 2 of the Act, an appeal shall lie from a judgement or order passed by one judge of the High Court, in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court. The 'proviso' thereunder clearly stipulates that no such appeal shall lie against an interlocutory order or against an order passed in exercise of 'supervisory jurisdiction' under Article 227 of the Constitution of India.
8. Admittedly, the writ petition was filed under Article 227 of the Constitution of India and the same was considered by the learned Single Judge in exercise of supervisory jurisdiction. This being the position, in view of the categorical declaration under 'proviso', no such appeal shall lie against an order passed in supervisory jurisdiction under Article 227 of the Constitution of India.
9. The question however is sought to be answered by the learned Counsel for the Appellant stating that the proviso to Section 2(1) of the Act is not an absolute bar in preferring appeals and it depends upon the facts and circumstances as held by a Full Bench of this Court in the matter of **Ajay Gupta v. State of Chhattisgarh and Others** passed on **25.01.2017** in **Writ Appeal No.255 of 2016**.
10. We have gone through the said judgement and we find it extremely difficult to persuade ourselves to accede to the said proposition. The judgement rendered by the Full Bench was pursuant to a reference made in this regard. The question referred was “**Whether the proviso to Section 2(1) of the Act, 2006 is an absolute bar to entertain an appeal against an**

interlocutory order without considering the scope of the order and without considering whether the interlocutory order has decided the rights of the parties and has an element of finality attached to it ?”

11. This was discussed in detail and the reference was answered in the following terms :-

“We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finally attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

12. From the above, it is quite evident that the Full Bench asserted in crystal-clear terms, that the proviso to Section 2(1) of the Act bars appeal against those interim orders which are totally interlocutory in nature and do not decide the matters of moment and do not have element of finality attached to it. It is also made clear that the orders, the effect of which cannot be

undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such order.

13. It is relevant to note, as mentioned already, that the right of appeal, under Section 2(1) of the Act is only in respect of proceedings under Article 226 of the Constitution of India (and not under Article 227). This aspect has been further clarified in the 'proviso', where it is specifically stated that no appeal will lie against an order passed in exercise of supervisory jurisdiction under Article 227 of Constitution of India. In fact, the proviso to sub-section (1) of Section 2 of the Act is having two limbs. The first one clearly specifies that no appeal will lie against an interlocutory order; and the second one stipulates that no appeal will lie against an order passed in exercise of supervisory jurisdiction under Article 227 of Constitution of India.
14. The issue referred to the Full Bench was only in respect of the 'first limb' of the proviso i.e. "whether an appeal will lie against an interlocutory order" and that alone. No issue was referred to the Full Bench as to whether any appeal will lie against an order passed in exercise of supervisory jurisdiction under Article 227 of Constitution of India. As it stands so, the categorical declaration of law by the Full Bench holding that no appeal will lie in respect of an order which interlocutory in nature, in no way comes to the rescue of the Appellant to hold that appeal is maintainable in respect of an order passed in exercise of supervisory jurisdiction under Article 227 of Constitution of India.

15. Since the order passed by the learned Single Judge is in exercise of supervisory jurisdiction under Article 227 of Constitution of India and further, since no provision of law or precedent conferring right to prefer an appeal against such an order is brought to our notice, we are of the firm view that the present appeal is not maintainable in law.
16. The writ appeal is dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh