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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (OS) 227/2019 & CM APPLs. 49650/2019 and 54060/2019**
M/S JINDAL DRILLING & INDUSTRIES LTD Appellant
Through: Mr Pradeep Dewan, Senior Advocate
with Mr Dhruv Gupta, Ms Anupama,
Mr Harshil Gupta, Advocates.

versus

NARESH KUMAR AGARWAL & ORS Respondents
Through: Mr Ratan Kumar Singh and Mr Jai
Pratap, Advocates for R-1.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **24.02.2020**

1.The present appeal is directed against an order dated 26th September, 2019 passed by the learned Single Judge in IA No. 11042/2019, which is an application filed by the Respondent No.1/Defendant No.1 under Order XI Rule 12 of the Code of Civil Procedure (‘CPC’) in CS (OS) No.1753/2013. The relevant portions of the impugned order read as under:

“10. The defendant no.1, by this application seeks discovery from the plaintiff of the documents mentioned in the application.

11. The counsel for the plaintiff states that he has already filed a reply. 12. The plaintiff will be entitled to, in the affidavit to be directed to be filed, state his stand with respect to each of the documents mentioned in the application.

13. The application is allowed.

14. The plaintiff to file affidavit with respect to the documents,

of which discovery is sought, within one month from today. The documents, possession and custody of which is admitted, be filed along with the said affidavit.

15. The application is disposed of.”

2. A preliminary objection as to maintainability has been raised by Mr. Ratan Kumar Singh, learned counsel appearing for the Respondent/Defendant No.1.

3. Mr. Pradeep Dewan, learned senior counsel appearing for the Appellant, refers to paras 90 and 91 of the judgment of the Supreme Court in ***Shah Babulal Khimji v. Jayaben D. Kania (1981) 4 SCC 8***. The said paras read as under:

“90. The next leading case which lays down the test of a 'judgment' and which seems to have found favour with most of the High Courts in India is the test laid down by Sir Arnold White, C.J. in *Tuljaram Row's case* (supra) where the learned Chief Justice pointedly spelt out various tests and observed thus:-

"The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent." I think, too, an order on an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment effective if obtained) - e.g.,

an order on an application for an interim injunction, or for the appointment of a receiver is a 'judgment' within the meaning of the clause."

91. Analysing the observations of the learned Chief Justice it would appear that he has laid down the following tests in order to assess the import and definition of the word 'judgment' as used in clause 15 of the Letters Patent:

(1) It is not the form of adjudication which is to be seen but its actual effect on the suit or proceeding;

(2) If, irrespective of the form of the suit or proceeding, the order impugned puts an end to the suit or proceeding it doubtless amounts to a judgment;

(3) Similarly, the effect of the order, if not complied with, is to terminate the proceedings, the said order would amount to a judgment;

(4) Any order in an independent proceeding which is ancillary to the suit (not being a step towards judgment) but is designed to render the judgment effective can also be termed as judgment within the meaning of the Letters Patent.

So far as this test is concerned, the learned Chief Justice had in mind orders passed by the Trial Judge granting or refusing ad-interim injunction or appointing or refusing to appoint a receiver.

(5) An order may be a judgment even if it does not affect the merits of the suit or proceedings or does not determine any rights in question raised in the suit or proceedings.

(6) An adjudication based on a refusal to exercise discretion the effect of which is to dispose of the suit, so far as that particular adjudication is concerned, would certainly amount to a judgment within the meaning of the Letters Patent."

4. Mr. Dewan also places reliance on the following passage in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.* 2017 (12) SCALE 837:

"9. First contention is that the order of Single Judge was not a 'judgment' finally affecting the rights of the parties and the non-maintainability of Letters Patent Appeal. Clause 15 of Letters Patent

provides for intra-court appeals against the judgment of Single Judge of the High Court. The right of the Letters Patent Appeal to the High Court depends upon whether or not the decision of the Single Judge appealed from affects the merits of the question between the parties and their valuable rights. Whether an order is a 'judgment' or an 'interlocutory order' depends upon whether or not, it has finally decided the rights of the parties and whether it has the effect of affecting the rights of the parties. For an order to be a 'judgment', it is not always necessary that it should put an end to the controversy or terminate the suit. An 'interlocutory order' determining the rights of the parties in one way or other is also a 'judgment'."

5. Mr. Dewan urges that since the impugned order decides the right of the Respondent No.1 to seek interrogatories and since disobedience of the order might entail, in terms of Order XI Rule 21 CPC, the suit itself being dismissed, the impugned order satisfies the test laid down in *Shah Babulal Khimji* (*supra*) for being considered to be an "appealable" order, in an intra-court appeal.

6. Having considered the above submissions, this Court is not satisfied that the impugned order answers the test laid down in *Shah Babulal Khimji* (*supra*), as further explained in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.* (*supra*). The Court finds that the consequences envisaged under Order XI Rule 21 CPC are in the discretion of the Court and do not automatically flow. The Court is also not satisfied that by being asked to produce the documents in question, any valuable right of the Plaintiff has been lost or any final decision has been rendered that will irreversibly decide the outcome of the suit.

7. For all of the aforementioned reasons, this Court holds that the impugned

order is not an appealable one and, as such, dismisses the appeal. The pending applications are also disposed of. No costs.

8. Order *dasti*.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 24, 2020
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