

A

R.J. SHAH AND CO.

v.

H.P. STATE ELECTRICITY BOARD

JULY 19, 2007

B

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C

Letters Patent Appeal in Himachal Pradesh High Court—Appeal to Division Bench against order of single Judge lies as ultimate succession of Lahore High Court from Himachal Pradesh area—Code of Civil Procedure, 1908—O.43 r.1

D

The question which arose for consideration in the present appeal is about the sustainability of the High Court's view in the impugned order that the Letters Patent in Lahore Court was not applicable in the State of Himachal Pradesh and hence no appeal either under Clause 9 or Clause 10 of the Letters Patent was maintainable in the Himachal Pradesh High Court and the impugned order was not covered by O.43 r. 1 CPC and hence no appeal against the said order would lie to the Division Bench of High Court.

E

Disposing of the appeal, the Court

HELD: The High Court has not noticed the view expressed in *Jugal Kishore's** case. It wrongly relied upon full Bench decision in *Hafiz Mohd*** which was over-ruled. The order of the High Court is set aside and the matter is remanded to it to decide the controversy afresh in the light of *Jugal Kishore's* case. [Para 3] [418-G-H]

F

P.S. Sathappan (dead) by Lrs. v. Andhra Bank Ltd. and Ors., [2004] 11 SCC 672 and *Jugal Kishore Paliwal v. S. Sat Jit Singh and Anr.** [1984] 1 SCC 358, relied on.

G

*University of Delhi v. Hafiz Mohd. Said***AIR (1972) Delhi 102; ILR (1976) 5 H.P. 551; *State of Himachal Pradesh v. Ajit Kumar*, ILR (1976) HP 24 and *Asa Singh Kochhar and Anr. v. Darshan Singh Kochhar and Ors.*, ILR (1976) 5 H.P. 551, referred to.

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5593 of 1997.

From the Judgment & Order dated 28.10.1994 of the High Court of Himachal Pradesh at Shimla in L.P.A. No. 8 of 1994. A

WITH

C.A. No. 5594 of 1997.

Jaideep Gupta, A.Y. Chitale, S.A. Chitake, Sujeeta Srivasatava, Madhuip Singh, Aditay Vikas Singh, Nimeka Jha and S. Janani for the Appellant. B

Maninder Singh, Pratibha, M. Singh, Gaurav Sharma, Rahul Ajatshatru and E.C. Agrawala for the Respondent.

The Judgment of the Court was delivered by C

DR. ARIJIT PASAYAT, J. 1. In the present appeals, an interesting question is raised about the sustainability of the High Court's view in the impugned order that the Letters Patent in Lahore Court was not maintainable as no appeal either under Clause 9 or Clause 10 of the Letters Patent was maintainable in the High Court and the impugned order was not covered by Order 43 Rule 1 of the Code of Civil Procedure, 1908 (in short the 'CPC'). The High Court held as follows: D

"In view of the discussion aforesaid, the Letters Patent of High Court of Judicature at Lahore has no application in the State of Himachal Pradesh and hence no appeal either under Clause 9 or Clause 10 of the said Letters Patent would lie to this High Court. The appeal against the judgment of a single Judge of this Court exercising ordinary original civil jurisdiction will, however, lie to a Division Bench of the High Court by virtue of Section 10 of the Delhi Act. This appellate jurisdiction is available against decrees and appellable orders covered under Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure. In the instant case, the impugned order is admittedly not covered by any part of Order 43 Rule 1 of the Code of Civil Procedure and hence no appeal against the said order would lie to the Division Bench of this Court. E F G

For the reasons aforesaid, the appeal fails and is dismissed."

2. In support of the appeals, learned counsel for the parties referred to the legislative history of the Letters Patent: Prior to 1919 the Chief Court of H

- A Punjab was at Lahore. The Letters Patent was promulgated on 21.3.1919. The establishment and constitution of the High Court of Punjab as done under Clause 10 provided for intra Court appeal. On 11.8.1947 the High Court (Punjab Order), 1947 under Section 9 of the Indian Independence Act, 1947 was promulgated. The Punjab High Court was constituted and included Delhi.
- B Power exercised by erstwhile Punjab High Court was to be exercised by the High Court of East Punjab. Power of Letters Patent continued to operate at Punjab High Court. Himachal Pradesh was 'Part-C' State. It was under the Punjab High Court. Subsequently, separate Court of Judicial Commission in various 'Part-C' States started functioning. On 26.1.1950 the Judicial Commission was declared as the High Court by the Judicial Commission's
- C Court (Declaration of High Court), 1950. On 1.7.1954 two 'Part-C' States amalgamated were Himachal Pradesh and Bilaspur by the New States Act, 1954. There was one Judicial Commission for the State of Himachal Pradesh. On 1.11.1956 'Part-C' States were abolished by the Constitution (7th Amendment) Act. Accordingly, the erstwhile Part-C State became the State of Himachal Pradesh. On 1.5.1967 the Delhi (High Court) Act, 1966 came into
- D force. The jurisdiction extended over Himachal Pradesh by carving out Delhi and Himachal Pradesh from the original Punjab High Court. Under Section 5, the powers exercised by the Punjab High Court came to be exercised by the Delhi High Court in its territories including Himachal Pradesh. Accordingly, Judicial Commission, Himachal Pradesh came to be abolished by the Delhi
- E High Court Act. On 25.12.1970 by the State of Himachal Pradesh Act, 1970 Delhi High Court ceased to have jurisdiction over Himachal Pradesh and the Himachal Pradesh High Court came into existence. Section 23 of the Act made this position clear.

3. It is to be noted that the foundation of the impugned judgment is a

- F Full Bench decision of Delhi High Court which decided that if order of the learned Single Judge is in its ordinary original jurisdiction, no Letters Patent would lie to the Division Bench of the High Court. (See *University of Delhi v. Hafiz Mohd. Said* AIR (1972) Delhi 102). The Division Bench in the impugned judgment ought to have followed *Jugal Kishore Paliwal v. S. Sat Jit Singh and Anr.*, [1984] 1 SCC 358 and two earlier decisions in *Asha Kochar's* case ILR (1976) 5 H.P. 551 and *State of Himachal Pradesh v. Ajit Kumar*, ILR (1976) HP 24. This Court in *Jugal Kishore's* case (supra) expressly over-ruled the view in *Hafiz Mohd. Said's* case (supra). The High Court has not noticed the view expressed in *Jugal Kishore's* case (supra). We, therefore, set aside the order of the High Court, remand the matter to it to decide the controversy
- H afresh in the light of *Jugal Kishore's* case (supra) and also to take note of

view expressed by this Court in *P.S. Sathappan (dead) by Lrs. v. Andhra Bank Ltd. and Ors.*, [2004] 11 SCC 672.

4. The appeals are accordingly disposed of.

D.G.

Appeals disposed of.