1931

BINDESERI v. BANSHI LAL.

of the word "artisan" be accepted, and there is no reason why it should not be (though in common parlance it is generally taken to mean handicraftsman), one who practises the art of soap-making should be considered to be an artisan within the meaning of that word in section 60, clause (*b*). The word "tool" is defined in the same dictionary as "any instrument of manual operation; a mechanical implement for working upon something, as by cutting, striking, rubbing, or other process, in any manual art or industry; one held in and operated directly by the hand (or fixed in position, as in a lathe), but also including certain simple machines, as the lathe." This is a very comprehensive definition of the word "tool" and would *prima facie* include the entire paraphernalia for the soap factory of the judgment-debtor. I hold that all the articles mentioned in list A should be considered as tools of an artisan within the meaning of section 60 (*b*) of the Code of Civil Procedure and therefore exempt from attachment and sale in execution of a decree.

The result is that this application for revision is allowed. The articles attached in execution of the respondent's decree shall be forthwith released.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice King.

AMBIKA PRASAD AND OTHERS (APPLICANTS) v. DEBI DAYAL AND OTHERS (OPPOSITE PARTIES).*

1931 *November*, 30.

Civil Procedure Code, section 109 (*a*) and (*c*)—"*Final order passed on appeal*"—*Order granting review of judgment.*

An order granting an application for review does not finally dispose of any case but reopens the decree that was passed originally by the court, and therefore the order is not a final order within the meaning of section 109 (*a*) of the Civil Procedure Code. Further, section 109 (*a*) lays down that the final order which is appealable is a final order "passed on appeal" and does not say that any order finally or otherwise

* Application No. 25 of 1929, for leave to appeal to His Majesty in Council.

1931

AMBIKA PRASAD v. DEBI DAYAL.

passed in exercise of the appellate jurisdiction of the court is appealable.

The fact that an appeal is provided by order XLVII, rule 7, of the Civil Procedure Code from an order of a lower court granting an application for review is no ground for certifying under section 109 (*c*) an order of the High Court granting an application for review as a fit case for appeal to the Privy Council.

Messrs. *B. E. O'Conor* and *Ram Nama Prasad*, for the applicants.

Mr. *S. N. Verma*, for the opposite parties.

BANERJI and KING, JJ. :—This is an application for leave to appeal to His Majesty in Council against an order of this Court granting an application for review. In paragraph 11 of the petition it is averred that so far as the review application was concerned, the case had been finally decided, and the paragraph goes on to say that the matter raises important and substantial points of law of general importance and that the case was a fit case for us to certify to His Majesty in Council.

The learned counsel for the petitioner has submitted that the application was for a certificate under section 109 (*a*) or in the alternative under section 109 (*c*) of the Civil Procedure Code. The valuation of the property involved in the case is over Rs. 10,000. The learned counsel submits that section 109 (*a*) provides that an appeal shall lie to His Majesty from any decree or final order passed in appeal by a High Court, and that so far as the parties in this case are concerned the order granting a review has set aside a final decree and that this Court, having granted an application for review, has passed an order that is final between the parties. We have come to the conclusion that this contention of the learned counsel cannot be accepted. An order can only be called a "final" order if it finally disposes of the rights of the parties. But the granting of an application for review does not finally

dispose of the dispute between the parties. Reference may be made to the case of *Ramchand Manjimal* v. *Goverdhandas Vishandas* (1), where their Lordships of the Privy Council, in a case where stay had been refused by the appellate court, held that the order refusing stay was not such an order as would be appealable to their Lordships. It is unnecessary to refer to various other cases on the point.

The order passed by us granting a review really does not finally dispose of any case, but reopens the decree that was passed originally by the court, and we therefore are of opinion that an order for review is not a final order which is appealable. We may also mention that section 109(*a*) lays down that the final order which is appealable is a final order "passed on appeal" and does not say that any order finally or otherwise passed in exercise of the appellate jurisdiction of the court is appealable.

The next point which has been contended for by the appellants is that we should certify under the provisions of clause (*c*) of section 109 of the Civil Procedure Code that this case is a fit case for appeal to His Majesty.

It is contended that the principle, upon which a court should act in certifying in review matters, is that whereas an appeal is permitted in the case of any other court under order XLVII, rule 7, of the Code of Civil Procedure, but no appeal is provided for by the Code against an order of the High Court, there should be an appeal to His Majesty in Council.

It was argued that in this case, if an appeal was permissible under order XLVII, rule 7, the applicant could have objected that the application for review was barred by limitation and that this Court exercised its discretion wrongly in extending time to the

(1) (1920) I. L. R., 47 Cal., 918.

1931

AMBIKA PRASAD v. DEBI DAYAL.

applicants. Reliance is placed on the case of *Jagmohan Singh* v. *Sheomangal Singh* (1). We have examined this case, and the reason that was given for rejecting that application was that even if it was a case in which an appeal was allowed the provisions of order XLVII, rule 7, did not give a right of appeal in that particular case. It is not possible to hold that this case is an authority for the proposition that when a right of appeal is given by order XLVII, rule 7, a case can be said to be a fit case for certification for appeal to His Majesty in Council. The learned counsel strenuously contended that the exercise of discretion in this particular instance was wrong and if the matter went up to their Lordships of the Privy Council, there would be an end to the litigation. The learned advocate for the respondent urges that even if leave is granted, in the event of their Lordships of the Privy Council agreeing to the view taken by us on the question of the exercise of discretion, the litigation will still continue. It can hardly be said that any substantial question of law has to be decided in the case. Moreover the admission of additional evidence is subject to the decision of the court whether the document presented now was or was not admissible. Further, there were a number of issues in the case which would have to be decided even if the court held, upon a consideration of the additional evidence now to be tendered, that the plaintiff had a *locus standi* to sue. In these circumstances, we are of opinion that this case is not a fit case in which we should certify it to be appealable to His Majesty in Council. The application is dismissed with costs.

(1) (1925) 90 Indian Cases, 332.