FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Niamat-ullah and Mr. Justice Rachhpal Singh

MUKUND LAL AND ANOTHER (APPLICANTS) *v.* GAYA PRASAD AND OTHERS (OPPOSITE PARTIES)* — 1935 *March*, 6

Civil Procedure Code, section 151—*No inherent power of High Court to interfere with proceedings in suit pending in lower courts—Order of lower court restricting cross-examination of witnesses in a pending suit—Government of India Act,* 1915, *section* 107—*Powers of superintendence—Do not authorise revision of order of a subordinate court on the ground of being wrong in law—Jurisdiction.*

While two connected suits, having certain issues common to them, were being tried together in a subordinate court, and a witness for the plaintiffs was being examined in one suit on the common issues as well as the other issues arising in that suit alone, counsel for the defendants was stopped by the court from cross-examining the witness on questions relating to the issues which arose exclusively in the other suit. Thereupon the defendants applied to the High Court for an order that they should be allowed to cross-examine the witness on those issues also:

Held that a superior court can not, in the exercise of its inherent power, dictate to a subordinate court how to decide a particular point arising in a case pending in that court. The power referred to in section 151 of the Civil Procedure Code would not include a power, similar to the power of revision under section 115, in cases to which that section is not applicable. Section 151 should not be utilised so as to make it supplementary to section 115. The inherent powers which can be exercised by a superior court are ordinarily such powers as are necessary to exercise in relation to proceedings pending before it, and not in relation to proceedings pending in subordinate courts. Section 151, therefore, had no application to the case.

Held, also, that the High Court is not competent, in the exercise of the powers of superintendence conferred by section 107 of the Government of India Act, to interfere with and set right the orders of a subordinate court on the ground that the order has proceeded on an error of law or an error of fact. Whether the section conferred on the High Court only purely administrative authority or also powers of a *quasi* judicial

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character, it certainly conferred no power to interfere with or set aside judicial proceedings of a subordinate court.

Mr. *S. N. Seth*, for the applicants.

Messrs. *P. L. Banerji* and *G. S. Pathak*, for the opposite parties.

SULAIMAN, C.J., NIAMAT-ULLAH and RACHHPAL SINGH, JJ.:—This case has been referred to a Full Bench on account of a divergence in the opinions expressed in two cases of this Court and that expressed in the Bombay High Court. The applicants applied to this Court praying that a certain witness, who was being examined in the court below, should be allowed to be cross-examined by them on all the issues that arose in two connected suits. These two suits were being tried together; but the court had perhaps passed some orders previously that evidence should be led by the plaintiffs in one suit on the issues arising in that suit or issues which were common to both the suits. When the witness Bhagwan Das was being cross-examined, the applicants' counsel tried to put questions to him relating to issues which arose exclusively in the other suit, and the court disallowed such questions.

The application in the High Court did not profess to have been filed under any specific provision of the law; but the learned counsel admitted that it was not an application for revision under section 115 of the Civil Procedure Code, but should be treated as an application under section 151 of the Civil Procedure Code, or section 107 of the Government of India Act. The learned Judge who referred the case first to a Division Bench expressed the opinion, which cannot be questioned, that section 115 would not be applicable to such a matter, as no case had yet been decided, the court below having merely disallowed certain questions that had been put to the witness.

Section 151 does not in terms confer any inherent jurisdiction on the courts, but merely preserves the inherent power of the court to make such orders as may

be necessary for the ends of justice or to prevent abuse of the process of the court. Ordinarily, as pointed out by the learned Judge who referred the case first, the preservation of the inherent power would not enable courts to extend the scope of the powers specifically conferred upon them by other provisions of the Civil Procedure Code and section 151 should not be utilised so as to make it supplementary to section 115. The inherent powers which can be exercised by a superior court are ordinarily such powers as are necessary to exercise in relation to proceedings pending before it. The Calcutta High Court and the Lahore High Court have exercised the power of staying proceedings in a subordinate court, professing to act under section 151. No other case has been cited before us showing that such a power had, prior to 1906, been exercised in any other way in relation to proceedings pending in subordinate courts.

An opinion was expressed in *Harnand Lal* v. *Chaturbhuj* (1) that the inherent power preserved by section 151 would extend to orders to subordinate courts. That, however, was a case where the subordinate court had refused to stay proceedings and the High Court ordered that the proceedings be stayed until proceedings in lunacy, which were going on in the court of the District Judge, had been determined. At a later stage the same case, *Chatarbhuj* v. *Harnand Lal* (2), was brought up before the High Court, because the court below had declined to appoint a guardian for the defendant, accepting the finding of the District Judge in the lunacy proceedings that he was not a lunatic. As the case was still pending, the learned Judges felt inclined to hold that even section 115 of the Civil Procedure Code might be applicable to such a case but preferred to base their decision on section 151, and held that they could direct the court below to inquire into the question of lunacy itself. Certain observations in

(1) (1926) I.L.R., 48 All., 356. (2) (1927) I.L.R., 50 All., 335.

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the judgment suggested that the powers reserved to courts under section 151 are very wide and that any order can be passed which would be for the ends of justice and to prevent an abuse of the process of subordinate courts.

On the other hand, the Bombay High Court in *Bhausing* v. *Chaganiram Harchand* (1) and *Ramchandra Govind* v. *Jayanta* (2) has taken the view that the power referred to in section 151 does not include power to dictate to a subordinate court and interfere with its proceedings. In a later case decided by another Bench of this Court, in *Atma Ram* v. *Beni Prasad* (3), it was laid down that ordinarily the inherent power, referred to in section 151, would be limited to its jurisdiction to deal with proceedings pending before it and would not include a wide jurisdiction over inferior courts; otherwise it would be conferring power on the High Court even far in excess of that conferred by section 115. The learned Judges in *Harnand Lal's* case had relied on two earlier cases of this Court in *Joshi Shib Prakash* v. *Jhinguria* (4) and *Balgobind* v. *Sheo Kumar* (5) in support of their opinion; but these cases are no authority for the proposition that a superior court can, in the exercise of its inherent power, dictate to a subordinate court how to decide a particular point arising in a case. They were all cases where inherent power was exercised in relation to proceedings which had taken place in the High Court itself. We are of opinion that the power referred to in section 151 would not include a power similar to power of revision under section 115, even in cases to which that section is not applicable. The legislature has thought fit to restrict the revisional power of the High Court under section 115; and it could not have been intended that that section could be ignored and the High Court could exercise its inherent power and rectify errors of law or errors of fact committed by courts below

(1) (1918) I.L.R., 42 Bom., 363. (2) (1920) I.L.R., 45 Bom., 503.
(3) (1934) I.L.R., 56 All., 907. (4) (1923) I.L.R., 46 All., 144.
(5) (1924) I.L.R., 46 All., 864.

in cases decided judicially. We are, therefore, of opinion that section 151 can have no application to the case before us.

It is next contended that the power of superintendence, conferred on High Courts under section 107 of the Government of India Act, is much wider in its scope and empowers this High Court to interfere in the present case. The language of section 107 is similar to that used in clause 15 of the Charter Act (24 and 25 Vic., c.104). While that Act was in force, the question came up for consideration before a Full Bench in *Tej Ram* v. *Harsukh* (1) and it was the unanimous opinion of all the four learned Judges that the clause conferred on the High Court no revisional power, no power to interfere with or set aside judicial proceedings of a subordinate court, though it conferred on the High Court administrative authority, and not judicial powers, and that it would be competent for the High Court in the exercise of its powers of superintendence to direct a subordinate court to do its duty or abstain from taking action in matters of which it has no cognizance; but the High Court is not competent in the exercise of this authority to interfere and set right the orders of a subordinate court on the ground that the order of the subordinate court has proceeded on an error of law or an error of fact. The learned Judges pointed out that this interpretation of the statute was in accord with the practice which had prevailed in this Court. Although in a later Full Bench case, *Muhammad Suleman Khan* v. *Fatima* (2) it was conceded that the power conferred on High Courts under section 15 of the Charter Act was not confined to administrative superintendence only but included powers of a judicial or *quasi* judicial character, it was agreed that "the High Court is not competent, in the exercise of this authority, to interfere with and set right the orders of a subordinate court on the ground that the order of the subordinate court has proceeded on

(1) (1875) I.L.R., 1 All., 101. (2) (1886) I.L.R., 9 All., 104.

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an error of law or an error of fact". This opinion was, of course, followed by a Division Bench later, in the case of *Adya Saran Singh* v. *Jagannath* (1), which arose under section 107 of the Government of India Act. The learned Judges pointed out that the power of superintendence vested in this Court, as embodied in section 107 of the Government of India Act, was not intended to authorise this Court, in the exercise of the authority so given, to interfere with or set right the order of a subordinate court on the ground that such order had proceeded on an error of law or an error of fact.

In view of these authorities, it is quite clear that it is impossible to interfere with the refusal of the court below to allow certain questions to be put to the witness on the ground that the court has erred in law in disallowing such questions. There are, no doubt, some cases arising under Act XVIII of 1879 (Legal Practitioners' Act) out of cases in which certain persons had been included in lists of touts maintained by District Judges and prevented from coming within the precincts of the court compound, e.g., *In the matter of the petition of Madho Ram* (2) and *In the matter of the petition of Kashi Nath* (3); but these were not really judicial cases adjudicating upon the rights of two contending parties but were orders of an administrative character which the District Judge had passed. The High Court considered that the case came within the purview of section 15 of the Charter Act or section 107 of the Government of India Act.

Our attention has also been drawn to the case of *Sant Lal* v. *Kedar Nath* (4), in which the power conferred on the High Court under section 107, Government of India Act, was invoked. In that case the Honorary Munsif had omitted to carry out the order of the High Court directing him to decide certain objections and proceed in accordance with law. The Munsif, in spite of the order, did not decide the objections, and did not

(1) (1924) I.L.R., 46 All., 323.
(2) (1899) I.L.R., 21 All., 181.
(3) (1923) I.L.R., 45 All., 676.
(4) [1935] A.L.J., 309.

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proceed in accordance with law. The learned Judge felt some difficulty in applying section 115, as the matter was still pending before the Munsif, but interfered under section 107 of the Government of India Act. That case was of a peculiar nature, and it is not necessary to consider in this case whether it was rightly decided, particularly as the learned Judge was bound to follow the previous Division Bench rulings.

In view of the decisions of the Full Benches of this Court and the practice which has prevailed so far, it is impossible for us to interfere under section 107 of the Government of India Act. The application is accordingly dismissed with costs.

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Niamat-ullah and Mr. Justice Rachhpal Singh

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SHAHZADI BEGAM (APPLICANT) *v.* ALAKH NATH AND OTHERS (OPPOSITE PARTIES)*

Letters Patent, section 10—"*Judgment*"—*Order dismissing application for extension of time for filing an appeal or application—No appeal lies—Civil Procedure Code, order XLIV, rule* 1—*Application for leave to appeal* in forma pauperis, *accompanied by memorandum of appeal and copies of judgment and decree—Rejection of application is not rejection of appeal—Rules of High Court, chapter I, rule* 1, *clauses* (x) *and* (xii)—*Powers of a single Judge in dealing with an application for leave to appeal* in forma pauperis.

An order dismissing an application under section 5 of the Limitation Act and refusing to extend the time for filing an appeal or an application, as the case may be, is not a judgment within the meaning of section 10 of the Letters Patent, and accordingly no appeal lies from the order.

Such an order does not involve an automatic dismissal of the appeal in itself; the two matters, namely the appeal filed beyond time and the application for extension of time, are distinct and separate. The granting or rejection of the application, according as a sufficient cause for the delay is or is not made out to the satisfaction of the court, is not an adjudication upon the rights and liabilities of the parties, but is of the nature of an interlocutory order in a pending matter; the

*Appeal No. 14 of 1933, under section 10 of the Letters Patent.