

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Allsop

HAR PRASAD AND ANOTHER (PLAINTIFFS) v. BOOL CHAND
(DEFENDANT)*

1936
August, 27

Rules of High Court, chapter I, rule 1, clause (ii)—Constitution of Benches for hearing of appeals by single Judges or Division Courts—Amendment of rule regarding such constitution, between the filing and the hearing of an appeal—Right of appeal does not include a vested right to be heard by any particular Bench of the High Court—Government of India Act, 1915, section 108(1).

A right of appeal to the High Court does not include any substantive right vested in the appellant to have the appeal heard by any particular Bench of that Court. Under section 108(1) of the Government of India Act, 1915, the High Court makes rules providing for the exercise of its appellate jurisdiction by single Judges or by Division Courts constituted of two or more Judges, and an appellant has not any vested right in such a constitution as it existed at the time when his appeal was filed. So, where a second appeal valued at Rs.1,200 was filed, and under the rules existing at that time appeals above Rs.1,000 in value were to be heard by a Bench of two Judges, but the rule was subsequently amended so that second appeals up to Rs.2,000 in value were to be heard by single Judges, it was held that the appeal in question should be heard by a single Judge.

Dr. N. P. Asthana and Mr. M. L. Chaturvedi, for the appellants.

Mr. Panna Lal, for the respondent.

SULAIMAN, C.J., and ALLSOP, J.:—The question referred to this Bench is whether the appellant can claim as of right that this appeal should be heard by a Bench of two Judges of this Court. The valuation of the appeal is Rs.1,200 and at the time when it was filed it was cognizable by two Judges under the rules made by this Court. Recently the pecuniary jurisdiction of

*Reference in Second Appeal No. 527 of 1934.

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a single Judge has been raised up to Rs.2,000, and the appeal is now cognizable by a single Judge

The learned counsel for both the parties urge before us that there was a substantive right vested in the appellant to have the appeal heard by a Bench of two Judges only, and not by a single Judge. No doubt it is well established that the right of appeal is a substantive right and any rule taking away the right of appeal cannot have a retrospective effect so as to destroy that right. But under section 100 of the Civil Procedure Code the appellant had a right of appeal to *the High Court* from the decree passed in appeal by the Subordinate Judge on the grounds mentioned therein. The right was to appeal to the High Court and not to any particular Bench of this Court. Under section 108(1) of the Government of India Act, this High Court has made its own rules providing for the exercise of its appellate jurisdiction by one or more Judges or by Division Courts constituted of two or more Judges. This rule is exclusively for regulating the procedure in this Court as regards the constitution of Benches. We are unable to hold that the appellant has any vested right in such a constitution. If by an amendment of the rules the constitution of the Benches is altered the appeal still lies to the High Court, and the appellant cannot claim that the appeal must be heard by a Bench as constituted before the rule was amended. We accordingly hold that the appeal was cognizable by a single Judge of this Court. Let the case be returned to the single Judge for disposal.