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Kapildeo Singh v. *The King.*

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Following the principles laid down in these cases, this Court will not interfere lightly in criminal cases, and we have interfered in the present case, because in our opinion it can be brought within the ambit of those principles.

Conviction set aside: case remanded.

Agent for the appellant: *P. K. Chatterjee.*

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MOHAMMAD AMIN BROTHERS LTD. AND OTHERS

v.

DOMINION OF INDIA AND OTHERS.

[SIR HARILAL KANIA, C. J., SIR FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN and MUKHERJEA, JJ.]

Government of India Act, 1935, s. 205 (1)—"Final order", meaning of—Order of High Court on appeal setting aside order of winding-up and directing fresh hearing of the case after determination of pending disputes relating to quantum of debt due to petitioner—Whether "Final order"—Appeal to Federal Court—Maintainability—Test of finality of orders.

The Dominion of India, claiming that a sum of Rs. 35 lakhs was due to it from a limited company by way of income-tax and other taxes on income, applied under s. 162 of the Indian Companies Act for the compulsory winding-up of the company and an order for winding-up was passed by a Single Judge of the High Court. On appeal a Division Bench of the High Court overruled the objection raised by the company to the maintainability of the application on the ground that it related to a matter concerning revenue within the meaning of s. 226 (1) of the Government of India Act, but, finding that a *bona fide* dispute was pending before the Income-tax authorities relating to a substantial part of debt on which the application for winding-up was made and that the solvency of the company could not be determined before this dispute was decided, set aside the order of the Single Judge and remanded the case to him directing him to keep the application on the file and take it for hearing after the final determination of the dispute pending before the Income-tax authorities. An appeal was preferred to the Federal Court from this order of remand after obtaining a certificate from the High Court under s. 205 (1) of the Government of India Act that a question relating to the interpretation of the Government of India Act was involved:

Held, that the order appealed against was not a 'final order' or a 'judgment' within the meaning of s. 205 (1) of the Government of India Act, as it did not finally dispose of the rights of the

parties to the suit and the appeal was not maitainable. The collocation of the words 'judgment, decree or final order' in s. 205 (1) of the Government of India Act makes it clear that no appeal is provided for against an interlocutory judgment.

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APPEAL from the High Court of Judicature at Fort William in West Bengal: Case No. LXI of 1949.

This was an appeal under s. 205 of the Government of India Act, 1935, (as adapted) from a Judgment of a Division Bench of the High Court of Calcutta (Harries C. J. and Chatterjee J.) dated 13th September, 1949, setting aside an order of Sinha J. directing the compulsory winding up of the appellant company The material facts of the case and arguments of counsel appear in the judgment.

M. C. Setalvad (*G. N. Joshi* with him) for the appellants.

Sir Noshirwan Engineer, Advocate-General of India, (*H. J. Umrigar* with him) for respondent No. 1.

R. Chaudhury, for respondents Nos. 2 to 9.

B. Sen, for respondents Nos. 10, 11 and 12.

Samarendranath Mukherjee and *A. C. Ganguly*, for respondent No. 14.

1950. Jan. 24. The judgment of the Court was delivered by

MUKHERJEA J.—This appeal is directed against a decision of a Bench of the Calcutta High Court dated 13th of September 1949, by which an order of Sinha J. directing the compulsory winding up of the appellant company was set aside and the case was sent back to the trial court to be heard at a future date in accordance with the directions contained in the judgment. The appellants before us are a private limited company, having their registered office at 25/26 Waterloo Street, Calcutta, and they carry on *inter alia* the business of exporters and importers of hides, skins and other commodities. On March 30, 1948, the company was assessed to income-tax, corporation tax and excess profits tax at various sums of money aggregating to Rs. 35,00,796-5. After notices of demand were served on the assessee, proceedings were taken by the Revenue authorities for recovery of the amounts due on these

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assessments and on May 15, 1948, nine certificates under the Public Demands Recovery Act (Bengal) were forwarded to the Collector of 24-Parganas in execution of which certain assets of the company were attached. The attachment, it is admitted, is still subsisting. The company filed several appeals against the assessment orders to the Income-tax Appellate Tribunal. Some of these appeals have been heard and disposed of resulting in a reduction of the assessed amounts to the extent of about Rs. 8 lakhs, while the other appeals are still pending hearing. On January 26, 1949, the Directors of the company made and filed a declaration of solvency under s. 207 of the Indian Companies Act and on the day following, an extraordinary general meeting of the company was held, at which a special resolution was passed for voluntary winding up of the company and a pleader named B. C. Bhattacharyya was appointed liquidator. On February 7, 1949, the Dominion of India, which claimed the sum of over Rs. 35 lakhs from the company on account of the taxes mentioned aforesaid, presented an application on the Original Side of the Calcutta High Court for compulsory winding up of the company and on the 15th of February following two provisional liquidators were appointed. The company resisted the application for compulsory winding up and raised a number of points in opposition to it. The matter came up for hearing before Sinha J. and by his judgment dated the 12th of April, 1949, the learned Judge overruled the objections raised by the company and made a winding up order as was prayed for by the Dominion of India. Against that order, an appeal was taken to a Bench of the Calcutta High Court which came up for hearing before Trevor Harries C.J. and Chatterjee J. In support of the appeal, it was contended *inter alia* on behalf of the appellants that under s. 226 (1) of the Government of India Act, 1935, the Original Side of the High Court had no jurisdiction to entertain the application for winding up, which was presented by the Dominion of India for recovery of revenues due to it by the company. It was said that the proceeding was intimately connected with the collection and recovery of revenue alleged to be due to the Revenue

authorities and as s. 226 (1) of the Government of India Act precluded the court from investigating whether the alleged debts were just and payable, the section would operate as a bar to the court's dealing with the matter at all. The learned Judges, who heard the appeal, did not accept this contention and held that s. 226 (1) of the Government of India Act did not make the winding up petition unentertainable by the High Court. They held, however, that as there was a *bona fide* dispute relating to a substantial part of the debt on which the winding up petition was based and as the solvency or otherwise of the company could not be determined until the amount of its liability for taxes was finally decided by the Income-tax Appellate Tribunal, it was just and proper that the winding up proceedings should be stayed till the appeals preferred by the company against the orders of assessment were finally disposed of. The result was that the order of Sinha J. ordering the compulsory winding up of the company was set aside, and the application for winding up was directed to be kept on the file, to be taken up for hearing after the final determination of the income-tax and excess profits tax cases or appeals then pending. The provisional liquidators were to continue in the meantime and the costs of hearing before Sinha J. as well as of the appeal were to abide the final result of the winding up application. As there was a question of interpretation of s. 226 (1) of the Government of India Act involved in the case, the High Court granted a certificate under s. 205 (1) of the Government of India Act and on the strength of this certificate, the present appeal has been brought to this court.

Sir Noshirwan Engineer appearing on behalf of the Dominion of India, the principal respondent before us, took a preliminary objection challenging the competency of the appeal. His contention is that as the order appealed from is not a final order, the appeal is incompetent under s. 205 (1) of the Government of India Act, 1935, even though the High Court has granted a certificate in terms of that sub-section. The contention, in our opinion, is well founded and must prevail. Under

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s. 205 (1) of the Government of India Act the appellate jurisdiction of the Federal Court can be invoked only in respect to a judgment, decree or final order passed by a High Court, provided the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution Act or of any Order in Council or the Indian Independence Act, 1947, as mentioned therein. If the order appealed from does not amount to a final order, judgment or decree, a certificate given by the High Court is ineffectual by itself to attract the operation of s. 205 (1) of the Government of India Act.

The expression "final order" has been used in contradistinction to what is known as "interlocutory order" and the essential test to distinguish the one from the other has been discussed and formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this court in their recent pronouncement in *S. Kuppuswami Rao* v. *The King*(1), and the law on point, so far as this court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial Committee in *Ram Chand Manjimal* v. *Goverdhandas Vishindas*(2) and *Abdul Rahman* v. *D. K. Cassim and Sons*(3), and the authorities of the English Courts upon which these pronouncements were based, it has been held by this court that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties. To quote the language of Sir George Lowndes in *Abdul Rahman* v. *D. K. Cassim and Sons*(3) "the finality must be a finality in relation to the suit. If after the order the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it." The fact that the order decides an important and even a vital issue is by itself not material. If the decision on an issue puts an end to the suit, the order will undoubtedly be a final one, but if the suit is still left alive and has got to be tried in the ordinary way, no finality could attach to the order.

(1) [1947] F.C.R. 180.
(2) 47 I.A. 124.
(3) 60 I. A. 76.

Judged by that test, the order appealed from in the present case cannot certainly rank as a "final order". The order of the trial Judge did dispose of the rights of the parties that were in controversy in the proceeding, but the judgment of the appellate court left the entire case undecided. The proceedings were stayed till the appeals against the assessment orders were finally disposed of and the hearing of the application for winding up was adjourned *sine die*. Liberty was given to the parties to mention the case before the Judge taking company matters at the conclusion of the income-tax and excess profits tax appeals, and then the case was to be heard on fresh affidavits which the parties were entitled to file. The High Court did obviously dispose of one principal point in controversy between the parties, namely, whether s. 226 (1) of the Government of India Act was a bar to the entertainment of the winding up petition by the Original Side of the Court, but the decision on that issue is a purely interlocutory decision which merely determines that the proceeding is triable by the court. There has been no adjudication on the rights of the parties and that is still to be made under the terms and conditions set out in the order of the appeal court.

We are not impressed by the argument of Mr. Setalvad that when the trial Judge makes a final order, the appellate court's decision setting aside that order must necessarily rank as a final order, even though it does not decide the rights of the parties and leaves everything to be determined in the ordinary way. We cannot also agree with the contention of the learned Counsel that the judgment of the appellate court in the present case virtually amounted to a dismissal of the application for winding up filed by the Dominion of India, and what the latter was held entitled to do was to renew their application at a future date and on fresh materials which might be available after the tax cases were finally disposed of. The learned Judges, it will be seen, have expressly directed in the judgment that the original application, which was filed by the respondent on 7th of February 1949, would remain on the file, and it would be heard and disposed of after

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the conclusion of the tax appeals. The final disposal of the tax cases was considered material only for the purpose of removing the dispute which existed regarding the amount of debt actually due by the company to the revenue authorities and for determining precisely the financial position of the company at the date when the application for winding up was presented. There was no necessity for any order directing the original petition to be retained in the file and adjourning its hearing *sine die*, if all that the learned Judges intended was to give the Dominion of India an opportunity of renewing their application at some future date.

Lastly it was urged by Mr. Setalvad, though somewhat faintly, that even if the order appealed against is not a final one, it could still be regarded as a judgment and as such would come within the purview of s. 205 (1) of the Government of India Act. In English Courts the word "judgment" is used in the same sense as a "decree" in the Civil Procedure Code and it means the declaration or final determination of the rights of the parties in the matter brought before the court: vide *S. Kuppuswami Rao* v. *The King*(1). According to the definition given in the Civil Procedure Code, a judgment is the statement of reasons given by a Judge on which a decree or order is based. If the order which is made in this case is an interlocutory order, the judgment must necessarily be held to be an interlocutory judgment and the collocation of the words "judgment, decree or final order" in s. 205 (1) of the Government of India Act makes it clear that no appeal is provided for against an interlocutory judgment or order. The result is that the appeal fails on the preliminary ground and is dismissed. The appellants to pay the costs of respondent one. *Appeal dismissed.*

Agent for the appellants: *P. K. Bose.*

Agent for the respondent No. 1: *P. A. Mehta.*

Agent for respondents Nos. 2 to 12: *S. P. Varma.*

Agents for respondent No. 14: *S. L. Chibber* for *Ranbir Sawhney.*

(1) [1947] F.C.R. 180, at p. 189.