

LETTERS PATENT APPEAL

Before A. N. Bhandari, C.J., and S. S. Dulat, J.

KARTAR SINGH AND ANOTHER,—Appellants.

versus

HARIPAL SINGH AND OTHERS,—Respondents

Letters Patent Appeal No. 120 of 1956

States Re-organisation Act (XXXVII of 1956)—Section

63—Scope of—Whether revives a right of appeal destroyed under the Patiala and East Punjab States Union Judicature Ordinance (V of 2005 Bk.)—Pending proceedings—Meaning of—General Clauses Act (X of 1897)—Section 6—Right of appeal—Whether governed by the law in force at the time when judgment is delivered—Subsequent legislation—Whether can affect the right of appeal.

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Held, that section 63 of the States Reorganisation Act, 1956 does not revive the right of appeal which had been destroyed under the Patiala and East Punjab States Union Judicature Ordinance of 2005 Bk. prior to 1st November, 1956. The judgment became final and conclusive as soon as the Judge passing it declined to grant a certificate of fitness and the party in whose favour the order was passed came to acquire a vested right which could not be destroyed by subsequent legislation,

Held, that the expression "pending" means a matter undecided or undisposed of and a matter is deemed to be pending in a Court of law until it reaches a final determination in the said Court. An appeal which can be maintained only if it is accompanied by a certificate of fitness loses all force and vitality when the learned Judge from whose order the appeal is sought to be preferred declines to grant the necessary certificate. It follows as a consequence that as soon as the appellants' application for the grant of a certificate was dismissed by the Chief Justice, the appellants' right to prefer an appeal to the Division Bench came to an end. This being so there was on the

1st day of November, 1956 when the State of Pepsu merged in the State of the Punjab, no pending proceeding at all which could stand transferred to the High Court of the Punjab. The proceeding had died a natural death as soon as the application for the grant of a certificate was dismissed on the 10th September, 1956.

Held, that it may be stated as a broad general proposition that, in the absence of a contrary intention, the right of appeal is governed by the law which is in force at the time when the judgment was delivered and not by the statute subsequently enacted which gives, modifies or takes away the right of appeal. This principle has received statutory recognition by the enactment of section 6 of the General Clauses Act.

Appeal under Clause X of the Letters Patent against the Judgment passed by the Hon'ble Mr. Kesho Ram Passey, Chief Justice, of the then Pepsu High Court, Patiala, on 10th September, 1956, in Civil Miscellaneous No. 94 of 1955,

H S GUJRAL, for Appellants.

D. S. NEHRA, for Respondents.

JUDGMENT

Bhandari, C. J. BHANDARI, C. J.—This appeal under clause 10 of the Letters Patent raises the question whether a right of appeal which has been destroyed under the Patiala and East Punjab States Union Judicature Ordinance, 2005 Bk., has been revived by section 63 of the States Reorganisation Act, 1956.

On the 10th September, 1956, the Chief Justice of the Pepsu High Court passed an order under Article 226 of the Constitution quashing certain orders passed by the Financial Commissioner of Patiala. On the same day the appellant who was dissatisfied with the order of the Chief Justice presented an application under section 52 of the

Pepsu Judicature Ordinance, 2005 Bk., for a certificate that the case was a fit one for appeal to a Division Bench of the said Court and on the same day the learned Chief Justice dismissed this application. The State of Pepsu was integrated with the State of the Punjab on the 1st November, 1956, and the appellants preferred an appeal to this Court under clause 10 of the Letters Patent against the order of the learned Chief Justice of the Pepsu High Court. This appeal is now before us for consideration.

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Mr. Nehra who appears for the respondents raises a preliminary objection that the present appeal is not competent as the learned Judge by whom the order under appeal was passed had declined to certify that the case is a fit one for appeal to the Letters Patent Bench.

Section 63 of the States Reorganisation Act is in the following terms:—

“63. (1) All proceedings pending in the High Court of Patiala and East Punjab States Union immediately before the appointed day shall stand transferred to the High Court for the new State of Punjab (referred to in this Act as the High Court of Punjab).

(2) Any order made before the appointed day by the High Court of Patiala and East Punjab States Union shall for all purposes have effect, not only as an order of that Court, but also as an order made by the High Court of Punjab.”

The first point for decision in the present case is whether the proceeding which had terminated

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in the judgment of the 10th September, 1956, can be said to be a proceeding pending in the Pepsu High Court immediately before the appointed day, i.e., before the 1st day of November, 1956. The answer is clearly in the negative. The learned Chief Justice passed his order against the appellants on the 10th of September, 1956 and declined to certify that the case was a fit one for appeal. The expression "pending", legally speaking, means a matter undecided or undisposed of and a matter is deemed to be pending in a Court of law until it reaches a final determination in the said Court. An appeal which can be maintained only if it is accompanied by a certificate of fitness loses all force and vitality when the learned Judge from whose order the appeal is sought to be preferred declines to grant the necessary certificate. It follows as a consequence that as soon as the appellants' application for the grant of a certificate was dismissed by the Chief Justice, the appellants' right to prefer an appeal to the Division Bench came to an end. This being so there was on the 1st day of November, 1956, when the State of Pepsu merged in the State of the Punjab, no pending proceeding at all which could stand transferred to the High Court of the Punjab. The proceeding had died a natural death as soon as the application for the grant of a certificate was dismissed on the 10th September, 1956. This ground alone is sufficient to justify the dismissal of this appeal.

Mr. H. S. Gujral who appears for the appellants admits that his right of appeal to the Pepsu High Court was destroyed as soon as the said Court declined to grant a certificate of fitness but he contends that the Act of 1956 has conferred a fresh right of appeal on his clients by declaring in express terms that any order made by the Pepsu High Court shall for all purposes have effect not

only as an order of that Court but also an order made by the High Court of Punjab. If the order, dated the 10th September, 1956, by virtue of which the writ was granted, it is argued, had been passed not by the High Court of Pepsu but by the High Court of Punjab, it would not have been necessary for the appellant to obtain a certificate of fitness and he would have been at liberty to present an appeal to this Court under clause 10 of the Letters Patent without any such certificate. Two authorities of Supreme Court, namely, *Nathoo Lal v. Durga Prasad* (1), and *Indira Sohanlal v. Custodian of Evacuee Property, Delhi and others* (2), have been cited in support of this contention. In the earlier case a second appeal preferred by the appellant was allowed by the Jaipur High Court. The defendant requested the same Court to review its own order. In the meantime the Jaipur High Court ceased to exist. The plaintiff preferred an appeal from the order of the Jaipur High Court to the Supreme Court of India under Article 133(1)(c) of the Constitution. Their Lordships of the Supreme Court held that the only operative decree in the suit which finally and conclusively determined the rights of the parties was the decree passed on the 5th of April, 1950, by the Rajasthan High Court and that having been passed after the coming into force of the Constitution of India, the provisions of Article 133 were attracted to it, and it was appealable to the Supreme Court. In *Indira Sohanlal v. Custodian of Evacuee Property, Delhi and others* (2), it was held that while a right of appeal in respect of a pending action may conceivably be treated as substantive right vesting in the litigant on the commencement of the action, no such vested right to obtain a determination with the attribute of finality can be predicted in favour

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(1) A.I.R. 1954 S.C. 355

(2) A.I.R. 1956 S.C. 77

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of a litigant on the institution of the action. Neither of the two decisions appears to me to have any bearing on the matters in controversy before us.

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The argument that the Act of 1956 has conferred a fresh right of appeal by declaring that an order of the Pepsu High Court shall be deemed to be an order of the Punjab High Court appears to me to be wholly devoid of force. Even if the order of the 10th September, 1956, declining to grant the certificate of fitness can be deemed to be an order of the Punjab High Court, the order of the Punjab High Court must be deemed to have been passed in accordance with the laws which were in force in the territory of Pepsu. According to those laws the judgment of the Chief Justice became final and conclusive because the learned Chief Justice had declined to certify that the case was a fit one for appeal to the Division Bench and because in the absence of this certificate no further right of appeal existed.

There is another aspect of the matter which needs to be considered. It may be stated as a broad general preposition that, in the absence of a contrary intention, the right of appeal is governed by the law which is in force at the time when the judgment was delivered and not by the statute subsequently enacted which gives, modifies or takes away the right of appeal. This principle has received statutory recognition by the enactment of section 6 of the General Clauses Act which declares that when a Central Act repeals any enactment, then unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. By enacting section 63 of the States Reorganisation Act, 1956,

the Legislature has not evinced an intention directly or indirectly of disturbing or destroying existing rights. The provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights *Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commissioner, Delhi and another* (1). It seems to me, therefore, that a judgment which had become final by reason of failure on the part of the appellant to obtain a certificate of fitness could not be affected by the provisions of the Act of 1956. The order of the Chief Justice became final and conclusive as soon as he declined to grant a certificate of fitness and the party in whose favour the order was passed came to acquire a vested right which could not be destroyed by subsequent legislation.

For these reasons, I would uphold the preliminary objection raised by Mr. Nehra and dismiss the appeal. There will be no order as to costs.

DULAT, J.—I agree.

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B. R. T.

APPELLATE CIVIL

Before D. Falshaw and I. D. Dua, JJ.

MESSRS GHAKI MAL-HUKAM CHAND FIRM HINDU
JOINT FAMILY, LUDHIANA AND OTHERS.—*Defendants-
Appellants.*

versus

PUNJAB NATIONAL BANK, LTD.,—*Plaintiff-
Respondent.*

Regular First Appeal No. 36 of 1950

*Code of Civil Procedure (Act V of 1908)—Order 30—
Rules 1 and 4—Joint Hindu family firm—One member*

1959

Feb., 16th

(1) A.I.R. 1927 P.C. 242