

it was held that mere non-compliance with the decree of restitution of conjugal rights does not constitute a wrong within the meaning of section 23(1) (a) of the Act. It would thus be seen that the view of the Full Bench in *Smt. Bimla Devi's case* (supra), has been fully affirmed by their Lordships of the Supreme Court in *Dharmendra Kumar's case* (supra).

(20) It was contended by the learned counsel for the appellant that in case a spouse obtains a decree for restitution of conjugal rights and if the cohabitation between the two spouses does not take place within one year thereafter, then even though the said spouse remarries before filing the petition for divorce, the provisions of section 23 of the Act would not be attracted. This contention need not be gone into in this case as we have come to the conclusion that Atma Ram, appellant did not contract a second marriage and thus he is entitled to a decree for divorce. This question, therefore, will be merely of academic discussion. While sitting in Full Bench it would be laying a wrong precedent to decide a question of law which does not arise in the case. The decision on a point, which does not arise in a case, will be merely in the form of *obiter dicta* and not a binding precedent. This question may, therefore, be gone into in some appropriate case.

(21) For the reasons recorded above, this Letters Patent Appeal is accepted, the order of the learned Single Judge is set aside and the petition for divorce is allowed with costs.

S. S. Sandhwalia, C.J.—I agree.

Prem Chand Jain, J.—I also agree.

N.K.S.

FULL BENCH

Before P. C. Jain, S. C. Mital and Surinder Singh, JJ.

PUNJAB NATIONAL BANK,—Appellant.

versus

M/S. LAXMI CHAND SUNDER DASS & others,—Respondents.

Civil Misc. No. 510-CI of 1981 in

Regular First Appeal No. 558 of 1978

September 15, 1981.

Punjab Courts Act (VI of 1918)—Section 39—Punjab Courts (Amendment) Act (V of 1980)—Sections 2 and 3(3)—Amending

Punjab National Bank v. M/s. Laxmi Chand Sunder Dass & others
(S. C. Mital, J.)

Act raising the jurisdictional value of appeals is to be heard by District Judges to an amount not exceeding rupees five lacs—Appeals whose jurisdictional value does not exceed such amount filed and pending in the High Court before enforcement of the Amending Act—Such appeals—Whether could be transferred to the District Judges under section 3(3) of the Amending Act.

Held, that the provisions of the Punjab Courts Act 1918 as amended by the Amending Act shall apply to every appeal from a decree or order of a Subordinate Judge filed or to be filed after the commencement of this Act and all such appeals the value of which does not exceed five lacs rupees in the High Court after such commencement and pending therein shall stand transferred. The provisions in question have been made to apply to every appeal filed or to be filed after the commencement of the Amending Act. Besides, having classified the appeals by their valuation of five lac rupees, emphasis is again on such appeals filed in the High Court after such commencement and pending therein. The Amendment Act though published in the Punjab Government Gazette on 28th July, 1980 was made to come into force on 9th January, 1980. In the nature of things, after the said date of the commencement of the Amending Act, appeals were expected to have been filed in the High Court and some of them which had not been disposed of, were obviously pending when the Amendment Act was published in the gazette. In view of the object of the limited retrospectivity, section 3(3) of the Amendment Act provided that the Act was applied to every appeal filed or to be filed after the commencement of the Amending Act. Upon a careful scrutiny of section 3(2) its context does not at all appear to suggest that the word "pending" has relation to the appeals pending before the commencement of the Act. Thus, the appeals filed and pending in the High Court before the enforcement of the Amending Act could not be transferred to the District Judges.

(Paras 6, 7 and 8).

Application under section 151 of the Code of Civil Procedure praying that the order directing transfer of the appeal to the District Judge deserves to be withdrawn.

R. N. Narula, Advocate with K. R. Chaudhary, Advocate, for the Appellant.

Mohinderjit Singh, Additional A. G. (Punjab), for the State.

A. N. Mittal, Advocate as Intervenor.

A. L. Bansal, Advocate, for the Respondent.

JUDGMENT

S. C. Mital, J.

(1) The above-noted regular first appeal was filed in the High Court in March, 1981 against the decree, dated 24th January, 1979, of Senior Sub-Judge, Bhatinda. The jurisdictional value of the appeal is claimed to be Rs. 1,56,675. During the pendency of this appeal, the Punjab Courts Act, 1918, was amended by Punjab Act No. 5 of 1980 (hereinafter referred to as the Amendment Act, 1980), which is deemed to have come into force on 9th January, 1980. In view of the provisions of sub-section (3) of section 3 thereof, this appeal, the value of which does not admittedly exceed five lac rupees, was ordered to be transferred to the District Judge, Bhatinda. By the present civil miscellaneous application, the said order of transfer has been challenged.

(2) The crucial point for determination is, whether by virtue of the provisions of sub-section (3) of section 3 of the Amendment Act, 1980, an appeal, the value of which does not exceed five lac rupees, filed in the High Court before the commencement thereof, i.e., 9th January, 1980, and pending in the High Court shall stand transferred to the District Judge exercising ordinary territorial jurisdiction in such appeal.

(3) A short legislative history of section 39 of the Punjab Courts Act, 1918 (hereinafter referred to as the principal Act), which stands amended by the Amendment Act in question, is as follows: Formerly, an appeal from a decree or order of a Subordinate Judge lay to the District Judge where the value of the original suit did not exceed five thousand rupees. In any other case, the appeal lay to the High Court. Later, the Punjab Act No. 35 of 1963 brought about an amendment to the effect that where the decree or order was made by the Subordinate Judge before 28th June, 1963, and the value of the original suit did not exceed five thousand rupees or where the decree or order was made after 28th June, 1963 and the value of the original suit did not exceed ten thousand rupees, appeal lay to the District Judge, and to the High Court in any other case. The next amendment of section 39 of the principal Act was, made by the Punjab Courts (Amendment) Act, 1975, with effect from 21st July, 1975. By that amendment, the jurisdiction of the District Judge to hear an appeal was enhanced in cases where the value of the original

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suit in which the decree or order was made did not exceed twenty thousand rupees. It was further provided therein that all appeals pending in the High Court, the value of which did not exceed twenty thousand rupees, shall stand transferred to the District Judge exercising ordinary territorial jurisdiction in such appeals. Then on 9th January, 1980, the Punjab Courts (Amendment) Ordinance, 1979 (Punjab Ordinance No. 1 of 1980) was promulgated by which in section 39(1) (a) of the principal Act, for the words "twenty thousand rupees", the words "five lakh rupees" were substituted. It will not be out of place to mention here that no identical amendment was made by Punjab Ordinance No. 1 of 1980 in sub-section (2) of section 39 of the principal Act providing for transfer of pending appeals from the High Court to the District Judge concerned. In *Mohinder Singh and others v. Baldev Kaur and others* (1) decided by a Bench of this Court, the scope of the Punjab Ordinance No. 1 of 1980, came up for consideration. The learned Judge held as under:—

"Punjab Ordinance No. 1 of 1980 is not retrospective either expressly or by necessary intendment and the change made in law is of substance and not procedural with the result that from all suits of the value of more than Rs. 20,000, but less than Rs. 5,00,000, instituted before 9th of January, 1980, when the Ordinance came into force, first appeals against decrees or orders passed therein would lie to the High Court and not to the District Judge."

It may as well be pointed out that during the Presidential Rule, Punjab Ordinance No. 1 of 1980, was repealed by Punjab Ordinance No. 4 of 1980 on 21st April, 1980, whereby the preceding amendment of section 39(1) (a) of the principal Act enhancing the jurisdiction of the District Judge to hear appeals of the value of five lac rupees, was re-enacted.

(4) At this stage, it would be worthwhile to quote the provisions of Amendment Act, 1980:—

1. *Short title and commencement.*—(1) This Act may be called the Punjab Courts (Amendment) Act, 1980, (2) it shall be

(1) F.A.O. 79 of 80 decided on 9th April, 1980.

deemed to have come into force on the 9th day of January, 1980.

2. *Amendment of section 39 of Punjab Act 6 of 1918.*—In the Punjab Courts Act, 1918 (hereinafter referred to as the principal Act), in section 39, in sub-section (1), in clause (a), for the words “twenty thousand rupees”, the words “five lakh rupees” shall be substituted.
3. *Repeal and saving.*—(1) The Punjab Courts (Second Amendment) Ordinance 1980 (Punjab Ordinance No. 4 of 1980), is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken or deemed to have been done or taken under the principal Act, as amended by the Ordinance referred to in sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.
- (3) Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of the principal Act, as amended by this Act, shall apply to every appeal from a decree or order of a Subordinate Judge filed or to be filed after the commencement of this Act and all such appeals the value of which does not exceed five lakh rupees filed in the High Court after such commencement and pending therein shall stand transferred to the District Judge exercising ordinary territorial jurisdiction in such appeals.”

Before proceeding further, it deserves mention that the learned counsel for the respondent, having instructions not to oppose the civil miscellaneous application under consideration, did not render any assistance to us. The question being of great general importance, affecting a large number of appeals, we instead received assistance from Mr. Mohinderjit Singh Sethi, Additional Advocate-General, Punjab, as *amicus curiae*.

(5) Very candidly, learned counsel for the applicant and Mr. Mohinderjit Singh Sethi agreed that the short legislative history, set out hereinbefore, was not helpful in the interpretation of the above-quoted sub-section (2), of section 3 of the Amendment Act, 1980.

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(6) Their Lordships of the Supreme Court in *Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax and another*, (2) have laid down:—

“A statutory enactment must ordinarily be construed according to the plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being un-intelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases.”

So far as the non-obstante clause of sub-section (3) of section 3 of the Amendment Act, 1980 is concerned, it has, *inter alia*, the effect of nullifying the above-cited judgment of this Court in F.A.O. No. 79 of 1980. Now, the important words are that “the provisions of the principal Act, as amended by this Act, shall apply to every appeal from a decree or order of a Subordinate Judge filed or to be filed after the commencement of this Act and all such appeals the value of which does not exceed five lakh rupees filed in the High Court after such commencement and pending therein shall stand transferred”. The provisions in question have been made to apply to every appeal “filed or to be filed after the commencement of this Act”. Besides, having classified the appeals by their valuation of five lac rupees, emphasis is again on such appeals “filed in the High Court after such commencement and pending therein”. In order to buttress his contention that section 3(3) of the Amendment Act also applied to the appeals filed before the commencement of the Act, Mr. Mohinderjit Singh Sethi laid stress on the words “filed” and “pending” occurring therein. But, in our view, the contention ignores the significant aspect of the matter that the Amendment Act, 1980, though published in the Punjab Government Gazette (Extraordinary) on 28th July, 1980, was made to come into force on 9th January, 1980. In the nature of things, after the said date of the commencement of the Act, appeals were expected to have been filed in the High Court. Some of them, which had not been disposed of, were obviously pending when the Amendment Act, 1980, was published in the Punjab Government Gazette. In view of the object of the limited retrospectivity, section 3(3) of the Amendment Act, 1980, provided that

the Act was applied to every appeal "filed or to be filed after the commencement of this Act". Upon a careful scrutiny of section 3 (3), its context does not at all appear to suggest that the word "pending" has relation to the appeals pending before the commencement of the Act. If such were the intention of the legislature, the provision instead would have been that the act shall apply to "appeals to be filed after the commencement of this Act and filed before such commencement."

(7) Mr. Mohinderjit Singh Sethi also referred to the Statement of Objects and Reasons which are as under:—

"The value of the property has risen manifold as a sequel whereto the High Court is clogged with many cases of appeals of Civil nature involving an amount exceeding rupees twenty thousand. In order to cope with voluminous work with the High Court it is difficult for the State Government to add more Judges to the High Court strength. Preference of appeals to the High Court in the cases of more than 20,000 value causes inconvenience to a sizeable chunk of public also. For the expeditious disposal of the cases at lower level the jurisdiction of the District and Sessions Judges in the State of Punjab to dispose of the appeals is being enhanced through this Bill, up to Rs. 5 lac."

In our view, the Objects and Reasons of Amendment Act, 1980, will not certainly stand frustrated if the applicability of the Act remains confined to the appeals filed in the High Court after the commencement of the Act.

(8) For the foregoing reasons, we allow this application and set aside the order of the transfer of this appeal to the District Judge, Bhatinda.

Prem Chand Jain, J.—I agree.

Surinder Singh, J.—I agree.

N. K. S.