

R. T. Gupta Industries and another *v.* M/s. Kwaliti Spinner
and another (H. N. Seth, J.)

cases, cannot have recourse to its inherent powers. A specific provision has been made for the grant of temporary injunction preventing the dispossession of the plaintiff by clause (c) of Order 39, Rule 1, Civil Procedure Code, which provides that the Court may grant a temporary injunction when the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property. It is only the first portion of the clause (c) which could possibly be invoked by the plaintiff, but that clause envisages a wrongful act on the part of the defendant. The use of the word "threatens" in this part of the clause implies a wrongful act on the part of the defendant and the taking of the law into his own hands. When a defendant seeks to recover possession through judicial process by way of execution of a decree lawfully passed in his favour, by no stretch of reasoning can it be said that he is threatening to dispossess the plaintiff or doing any wrongful act. The case, therefore, would not be covered by the said clause. Nor it would be possible to invoke the powers of the Court under Section 151 of the Code of Civil Procedure because of the specific provision available in the shape of clause (c) of Order 39, Rule 1. The Courts below, thus, acted illegally in granting the *ad interim* injunction in utter disregard and violation of the provisions of Order 39, Rule 1 of the Code of Civil Procedure.

(7) For the reasons recorded above, this revision is allowed and the impugned order reversed. No costs.

S.C.K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

R. T. Gupta Industries and another,—Appellants.

versus

M/S. KWALITY SPINNER and another,—Respondents.

Letters Patent Appeal No. 261 of 1987.

August 3, 1987.

Letters Patent, 1919—Clause X—Order confirming injunction in pending second appeal—Order—Whether a "judgment passed in the exercise of appellate jurisdiction"—Letters Patent Appeal—Whether maintainable against such an order.

Held, that what is prohibited under clause X of the Letters Patent is not merely a further appeal against a decree or order which finally disposes of a second appeal. The clause also prohibits an appeal against a judgment or order made by a Single Judge of the High Court while exercising the appellate jurisdiction *vis a vis* an appellate order made by a Court subject to its superintendence. In other words, clause X does not provide for an appeal against any judgment of a single Judge rendered while exercising its second appellate jurisdiction. As undoubtedly the impugned order (judgment) has been passed by the learned Single Judge of the High Court while exercising its second appellate jurisdiction, hence it has to be held that the instant case falls in first of the four categories enumerated in Clause X i.e. the judgments rendered in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by the Court subject to the superintendence of the High Court. Consequently, Letters Patent Appeal is not maintainable against such an order. (Paras 8 and 9).

Appeal under clause X of the Letters Patent against the order of Hon'ble Mr. Justice D. V. Sehgal passed in Civil Misc. No. 979 and 981/C of 1987 and Civil Misc. No. 471/C of 1987 arising from R. S. A. No. 489 of 1987 on March 20, 1987.

Mohinderjit Singh Sethi, Advocate, for the Appellants.

JUDGMENT

H. N. Seth, C.J.—

(1) Aggrieved by an order, dated March 20, 1987, passed by learned Single Judge of this Court in R.S.A. No. 489 of 1987, R.T. Gupta Industries (defendant in the suit giving rise to the second appeal) has filed the present Letters Patent Appeal under clause X of the Letters Patent applicable to this Court.

(2) M/s Kwaliti Spinners through its partner Bhagwan Dass filed a suit for recovery of Rs. 1,73,300 against R. T. Gupta Industries (hereafter described as defendant). During the pendency of the suit, Bhagwan Dass, a partner of the plaintiff-firm, who has been arrayed as plaintiff No. 2 obtained an order from the trial Court restraining the defendant from withdrawing a sum of Rs. 1,73,300 from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi. That order continued to be operative till the suit was eventually dismissed by the trial Court. The plaintiffs questioned the correctness of the decree passed by the trial Court by filing a first appeal which too was dismissed by the lower appellate Court. The plaintiffs then filed Regular Second Appeal

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No. 489 of 1987 before this Court and also moved an application praying that the defendant-respondents be restrained from withdrawing the amount of Rs. 1,73,300 from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi, during the pendency of the second appeal. While issuing notice of motion, the Court granted *ex parte* injunction restraining the respondents from withdrawing the sum of Rs. 1,73,300 from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi.

(3) The respondents appeared and contested the motion as also the prayer for injunction. After hearing counsel for the parties, the learned Single Judge came to the conclusion that a *prima facie* case for admission of the said appeal had been made out. Accordingly, he admitted the appeal for detailed consideration. So far as the prayer for the interim relief was concerned, learned Judge,—*vide* his order, dated March 20, 1987, directed that the injunction which had already been issued by the Court restraining the defendant from withdrawing the sum of Rs. 1,73,300 from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi, was to continue to operate till the decision of the appeal. He, however, gave an option to the defendant to have the injunction order vacated by furnishing bank guarantee for the refund of the sum of Rs. 1,73,300. Aggrieved, the defendant filed the present Letters Patent Appeal under clause X of the Letters Patent and questioned the validity of the order restraining him from withdrawing the sum of Rs. 1,73,300.

(4) The office of the Court has raised following objection to the maintainability of the present appeal:—

“Present L.P.A. has been filed against an order passed in Regular Second Appeal. Section 100-A C.P.C. provides no further appeal against any order passed in Second Appeal. As to how is this L.P.A. competent? This question might be brought to the kind notice of Hon'ble Judges at the time of motion hearing of this appeal.”

Section 100-A of the Code of Civil Procedure runs thus:—

“Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the

force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal.”

Learned counsel for the appellants urged that the objection raised by the office cannot be sustained inasmuch as section 100-A of the Code of Civil Procedure has no application to the facts of the present case. He emphasized the words “where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court.....” used in the section and contended that the bar created by section 100-A becomes operative only in respect of cases where, after decision of a second appeal, further appeal from the second appellate decree order, is contemplated. It does not apply to the cases where the appeal is directed against an order made during the pendency of a second appeal.

(5) Appeal is a creature of a statute. Section 100-A does not confer any right of appeal. It merely inhibits, in the circumstances mentioned in the section, the right of appeal conferred by the Letters Patent of a High Court or in cases where the same has been permitted by some other law or, instrument having the force of law. Accordingly, before considering the question as to whether present appeal stands barred by the provisions contained in section 100-A of the Code of Civil Procedure, we have first to see whether the appeal in question is otherwise maintainable under the Letters Patent, or some other law or some instrument having the force of law. In case the appeal is not otherwise maintainable, it would not become maintainable merely because it does not happen to be barred by section 100-A of the Code of Civil Procedure.

(6) The appellant claims that the present appeal is maintainable under clause X of the Letters Patent. He does not rely on any other statutory provision for this purpose. Relevant portion of clause X of the Letters Patent applicable to this Court reads thus:—

“And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction *in respect of a decree or order made in the exercise of appellate jurisdiction* by a Court subject

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to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of power of superintendence under the provisions of section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court.....”.

This clause in the Letters Patent confers a right of appeal against all judgments of Single Judges of the High Court except (1) Judgments rendered in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court; (2) orders made in exercise of revisional jurisdiction; (3) sentence or order passed or made in the exercise of power of superintendence under the provisions of section 107 of the Government of India Act, and (4) sentence or order passed in exercise of criminal jurisdiction by one Judge of the High Court.

(7) For the purpose of present discussion, we may take it that the order dated March 20, 1987, passed by the learned Single Judge injuncting the appellants from withdrawing the sum of Rs. 1,73,300 from the office of the Chief Controller of Accounts (Department of Supplies), New Delhi, and permitting them to do so only on furnishing bank guarantee is a “judgment” within the meaning of clause X of the Letters Patent, quoted above. However, it cannot be doubted that the said order has been made by the learned Single Judge in the exercise of his appellate jurisdiction which he was exercising in respect of a decree of the lower appellate Court, subject to the superintendence of this Court. Accordingly, the present judgment falls in the first of the four categories enumerated above and is not appealable under clause X of the Letters Patent.

(8) Learned counsel for the appellants attempted to take the case out of the purview of the first category mentioned above by contending that the order appealed against is an original order which has no bearing on the validity or otherwise of the decree under appeal. Accordingly, it cannot be said that the order is *in respect of the decree under appeal* and as such it would not fall within the ambit of first category of cases mentioned above. We are unable to accept this submission. What is prohibited under this clause is not merely a further appeal against a decree or order which finally disposes of a second appeal. The clause also prohibits an appeal

against a judgment or order made by a Single Judge of the High Court while exercising the appellate jurisdiction *vis a vis* an appellate order made by a court subject to its superintendence. In other words, clause X of the Letters Patent does not provide for an appeal against any judgment of a Single Judge rendered while exercising its second appellate jurisdiction.

(9) As undoubtedly the impugned order (judgment) has been passed by a learned Single Judge of the Court while exercising its second appellate jurisdiction (i.e. while exercising its appellate jurisdiction in respect of a decree passed by an appellate court subject to its superintendence), we are clearly of opinion that the instant case falls in first of the four categories against which Letters Patent Appeals have not been allowed by clause X of the Letters Patent.

(10) Learned counsel for the appellants could not point out any other provision under which the order of the learned Single Judge has been made appealable. Since appeal is a creature of a statute and no statutory provision enabling the appellants to file an appeal against the order of the learned Single Judge has been brought to our notice, the present appeal fails and is dismissed without any order as to costs.

R.N.R.

Before D. S. Tewatia and S. S. Sodhi, JJ.

KAPOOR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 3508-M of 1987.

August 4, 1987.

Code of Criminal Procedure (II of 1974)—Sections 362 and 482—Sentence of imprisonment ordered to run consecutively by Sessions Court—Modification of judgment sought on the basis of precedents to make sentence run concurrently—Modification sought—Whether would amount to review of the judgment of the trial Court—Sentence—Whether can be modified to run concurrently under inherent jurisdiction.