

The preliminary objection that no appeal is competent, is devoid of force. Substantially, the learned single Judge, has set aside the order of the Chief Commissioner in the exercise of Jurisdiction under Article 226 of the Constitution. The direction that the Chief Commissioner may rehear the matter before him is only of an ancillary nature and has undoubtedly been given under the supervisory powers of this Court under Article 227. The entire case hangs on the correctness of the decision given by the learned Judge, under Article 226. Untrammelled by any authorities on this question, it seems to me to be common sense that an appeal should lie in such a situation.

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Society Ltd.,
and another

Shamsher
Bahadur, J.

For the reasons stated by my learned brother, it is not a case in which there has been any violation of the constitutional guarantee enshrined in Article 14 of the Constitution. The preference which has been given to co-operative societies by the proviso to section 47 involves a classification which is relatable to the ultimate object and the welfare of the travelling public. I agree that the appeal ought to be dismissed and there should be no order as to costs.

K.S.K.

APPELLATE CIVIL

Before G. D. Khosla, C.J. and Gurdev Singh, J.

KALYAN SINGH,—Appellant.

v.

TEJ KAUR,—Respondent.

First Appeal from order No. II(M) of 1959.

Punjab Courts Act (VI of 1918)—Ss. 38 and 39—Appeal from an order of the Subordinate Judge deciding application under S. 10 of Hindu Marriage Act (XXV of 1955)—Whether lies to the High Court or to the Court of the District Judge.

Held, that sections 38 and 39 of the Punjab Courts Act do no warrant the filing of appeals under the Hindu Marriage Act, 1955, to the Court of the District Judge. An appeal from an order of the Subordinate Judge deciding an application under section 10 of the Hindu Marriage Act lies to the High Court and not to the Court of the District Judge.

.....Case referred by Hon'ble Mr. Justice Dua on 15th January, 1960 to a larger Bench for decision of the important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Chief Justice G. D. Khosla and Hon'ble Mr. Justice Gurdev Singh after deciding the point involved returned the case to the Single Judge for disposal on 22nd August, 1960 and the case was finally decided by Hon'ble Mr. Justice Dua on 11th November, 1960.

First Appeal from the order of Shri M. R. Sikka, Sub-Judge, 1st Class, Patiala (B) dated the 20th January, 1959, dismissing the applicaion and leaving the parties to bear their own costs.

Application under Section 10 of the Hindu Marriage Act, 1955.

H. L. SIBAL, D. S. TEWATIA AND S. C. SIBAL, ADVOCATES,
for the Appellant.

KULDIP CHAND, SUD, ADVOCATE, *for the Respondent.*

ORDER

G. D. KHOSLA, C.J.—The question for consideration in this case is whether an appeal from the order of a Subordinate Judge, 1st Class, upon an application under section 10 of the Hindu Marriage Act, 1955, lies to the High Court, or to the Court of the District Judge.

The matter came up for consideration in the original instance before Dua, J., and was referred

by him to a larger Bench, because he felt that the matter was of considerable importance and was likely to affect a large number of cases. We have heard counsel for both sides and have given the matter our anxious consideration.

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Applications under section 10 must be presented to the District Court. The "District Court" has been defined in clause (b) of section 3 of the Hindu Marriage Act as follows:—

“ ‘district court’ means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.”

There is a notification empowering Subordinate Judges to entertain applications under section 10, and in the present case, the application was heard and disposed of by a Subordinate Judge of the first class. Ordinarily, appeals from the orders of Subordinate Judges of the first class lie to the Court of the District Judge and in some cases to the Court of the Senior Subordinate Judge. It is, however, urged before us that the appeal in the present case, lies to the High Court and not to the Court of the District Judge or to the Court of the Senior Subordinate Judge. Our attention, has been drawn to the provisions of sections 38 and 39 of the Punjab Courts Act which deal with appellate jurisdiction in civil cases. Section 38 provides that an appeal from the order of a District

Kalyan Singh Judge, shall lie to the High Court, and the argument is that the Court, which deals with matters under the Hindu Marriage Act, is to be deemed the Court of a District Judge, and therefore, appeals from that Court lie to the High Court. Section 39(1) is in the following terms :—

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“39(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge, where the value of the original suit, in which the decree or order was made did not exceed five thousand rupees; and

(b) to the High Court in any other case.”

It is argued, that in the present case no valuation was put on the application, under section 10 and so it cannot be said that the value did not exceeds Rs. 5,000. In this view of the matter also the appeal (so it was argued), would lie to the High Court and not to the District Judge.

On the other hand, it has been argued that the vesting of the jurisdiction to hear applications under the Hindu Marriage Act does not raise the status of the Court. The Court hearing the application remains the Court of the Subordinate Judge, and, therefore, appeals from orders passed by it must lie to the Senior Subordinate Judge or the District Judge. Our attention was drawn to a Madras case, *Valliamal Ammal v. Periaswami Udayar*, (1), in which it was held that an appeal from an order passed on an application under the Hindu Marriage Act, lies not to the High Court but to the District Court. The Madras Civil Courts Act, however, is in somewhat different

(1) A.I.R. 1959 Mad, 510.

terms. Section 13 of that Act provides that appeals shall lie from the Courts of Subordinate Judges to the District Court, except when the amount or value of the subject-matter exceeds Rs. 10,000. Thus, if no valuation is put upon a suit or an application, it cannot be said that its subject-matter exceeds Rs. 10,000. Ramchandra Iyer, J., observed—

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“In regard to a matrimonial dispute, it cannot be stated that the subject-matter of the dispute exceeds Rs. 10,000. That is a matter which is not capable of valuation. It would, therefore, appear that if a subordinate Judge were given jurisdiction under the Act, an appeal from his decision would under section 13 of the Madras Civil Courts Act lie only to the District Judge.”

The learned Judge, repelled the argument that the Court of the Subordinate Judge must be deemed to be the Court of the District Judge merely because it was invested with jurisdiction to hear matters under the Hindu Marriage Act. Section 28 of the Hindu Marriage Act, makes provision for appeals, but it does not define the forum to which appeals are to be preferred. Therefore, we must have recourse to the provisions of the Punjab Courts Act, to determine the appellate forum. In the erstwhile State of Bombay, the relevant section of the Civil Courts Act was in the same terms, as the section of the Madras Act. A Division Bench of the Bombay High Court, interpreting this section, took the view that appeals from the orders of a civil Judge, lay to the District Court and not to the High Court. Gosain, J., has taken the contrary view in two cases, which he dealt with sitting singly. He held in First Appeal

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from Order No. 194-M of 1958, decided on 22nd September, 1959, and First Appeal from Order No. 28-M of 1959, decided on 17th March, 1960, that the appeal lay to the High Court and not to the District Court. It seems to me that the provisions of sections 38 and 39 of the Punjab Courts Act do not warrant the filling of appeals under the Hindu Marriage Act to the Court of the District Judge. The insolvency law does not provide an adequate analogy, because section 75 of the Provincial Insolvency Act, which deals with appeals, specifically provides that where an order in the exercise of insolvency jurisdiction is made by a Court subordinate to the District Court, the appeal would lie to the District Court, and where the order is made by the District Court, the appeal would lie to the High Court. There is no such provision in the Hindu Marriage Act.

I am, therefore, of the view that the present appeal lies to the High Court. The matter will now be placed before a learned Single Judge for disposal according to law.

Gurdev Singh, J.

GURDEV SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before D. Falshaw and Gurdev Singh, JJ.

THE SADHAURA TRANSPORT COMPANY, (P). LTD,—
 Petitioner.

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents.*

Civil Writ No. 1291 of 1960.

1960
 August, 30th.

Minimum Wages Act (XI of 1948)—S. 5(2)—Notification under, by the Governor of Punjab revising and fixing the minimum rates of wages in respect of the employment in public motor transport in the Punjab State—Whether valid—S. 3 (I)(b)—Revision of wages—Whether can be made after an interval of more than 5 years.