1962

December, 20.

LAKSHMI NARAIN

v.

FIRST ADDITIONAL DISTRICT JUDGE, ALLAHABAD

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Transfer of Appeal—Power of High Court—Enhancement of Jurisdiction of District Court—Transfer of first appeal pending in High Court to District Court—Validity—Power of District Court to hear the appeal—Code of Civil Procedure, 1908 (Act V of 1908) s. 24 (1) (a)—U. P. Civil Laws, (Reforms and Amendment) Act, 1954 (U. P. 24 of 1954), s. 3 (1).

The U. P. Civil Laws (Reforms and Amendment) Act, 1954, amended s. 21 (1) (c) of the Bengal, Agra and Assam Civil Courts Act, 1887, so as to enable the District Courts to hear first appeals valued up to Rupees ten thousand and by s. 3 (1) provided that any proceeding instituted or commenced in "any court prior to the commencement of this Act, shall, not withstanding any amendment herein made continue to be heard and decided by such Court." The appellant brought a suit in the Civil Judges Court for possession of certain properties. That suit was dismissed on November 27, 1951. He preferred a first appeal to the High Court on February 8,1952. That appeal; was transferred under s. 24 (1) (a) of the Code of Civil Procedure by the Chief Justice in Chambers and without notice to the parties, to the District Judge of Allahabad for hearing. The appellant appeared before that Court and raised a preliminary objection as to the jurisdiction of that court to hear the appeal. The objection was overruled. The appellant moved the High Court under Art. 226. Single Judge who heard the petition dismissed it *in limine* relying on a decision of the Division Bench. Appeal against the decision was summarily dismissed by the Division Bench.

Held, that under s. 3 (1) of the Act, the High Court alone was competent to hear the appeal pending before it; and by transferring the same to the District Court it had failed to give effect to the concluding words of the section.

Section 24 of the Code of Civil Procedure postulates that the Court towhich an appeal is transferred must be competent

to dispose of it. In the face of s. 3 (1) of the Act, the District Court was not competent to hear the appeal.

Although the object of the Act was to give relief to the High Court, it was clear that the Legislature did not grant that relief in respect of pending first appeals.

Held, further, that no costs can ordinarily be granted against a court and the High Court was in error in doing so.

Sarjudei v. *Rampati Kunwari*, 1962 All. L. J. 544 and *Cyril Spencer* v. *M. H. Spencer*, 1955 All. L. J. 307, considered.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 784 of 1962.

Appeal from the judgment and order dated July 13, 1962, of the Allahabad High Court in Special Appeal No. 82 of 1962.

M. C. Setalvad, Attorney-General for India and *B. C. Misra*, for the appellant.

K. S. Hajela and *C. P. Lal*, for respondent No. 1.

J. P. Goyal, for the intervener.

1962. December, 20. The Judgment of the Court was delivered by

SINHA, C. J.—When we had finished the hearing of the case on December 13, 1962, we intimated to the parties that the appeal was allowed and that our reasons would follow. *Sinha, C. J.*

The only question for determination in this appeal is whether under the provisions of the U. P. Civil Laws (Reforms and Amendment) Act (U. P. XXIV of 1954)—which hereinafter will be referred to as the Act—a first appeal in a suit decided prior to the enactment of the Act, involving a valuation of less than ten thousand rupees could be

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transferred for hearing and disposal to a District Judge or Additional District Judge. The First Additional District Judge, Allahabad, is the first respondent in this appeal and appeared through counsel at the hearing. The other respondents, who were the respondents in the main appeal, have not entered appearance and apparently are not interested in the result of this appeal.

In order to bring out the points in controvery between the parties it is necessary to state the following facts. The appellant, as plaintiff, instituted suit No. 7 of 1949 in the Court of the Civil Judge, Mathura, for possession of certain properties, on January 26, 1949, against respondents two and three. That suit stood dismissed on November 27, 1951. The unsuccessful plaintiff preferred a first appeal to the High Court of Judicature at Allahabad, and it was numbered First Appeal No. 37 of 1952. The First Appeal aforesaid remained pending in the High Court from February 8, 1952, when it was instituted, until April 23, 1952, when it was notified to the parties that the appeal had been transferred to the Court of the District Judge, Allahabad, for hearing. This order was passed by the learned Chief Justice in Chambers, under s. 24 (1) (a) of the Code of Civil Procedure, on his own motion without notice to the parties concerned. The order of the Chief Justice is in these terms :

> "It is hereby ordered that first appeals mentioned in the list annexed hereto transferred under orders of this Court to the Court of the District Judge Allahabad, are now transferred from that Court to the Court of the 1st Additional District Judge at Allahabad."

In the list annexed is the appeal now in question, alongwith a number of other appeals. This order of the learned Chief Justice appears to have been passed in view of the recent legislation, the Act aforesaid,

which amended a large number of statutes, one of them being the Bengal, Agra and Assam Civil Court Act (XII of 1887). Section 21, cl. (a) of sub-s. (1) was amended so as to substitute 'ten thousand rupees' for 'five thousand rupees', thus enabling District Courts to entertain first appeals up to a valuation of ten thousand rupees. The appellant appeared before that Court and raised a preliminary objection as to the jurisdiction of that Court to hear the appeal. The Court overruled the preliminary objection as to its jurisdiction, by its order dated May 31, 1962, observing that it could not contravene the orders of the High Court and that the remedy of the appellant, if any, lay in the High Court itself. Thereupon the appellant moved the High Court under Arts. 226 and 227 of the Constitution for a writ of *certiorari* for calling for the records of the appeal, and for a writ of prohibition restraining the first respondent from hearing the appeal. The writ petition was placed before a single Judge of that Court (Dwivedi, J.), who by his order dated July 11, 1962, dismissed the petition in view of a Division Bench ruling of the same Court in a judgment dated November 14, 1961, in the case of *Sarjudei* v. *Rampati Kunwari* (1). The learned Single Judge rightly pointed out that he could not go behind the decision of the Division Bench, even though it was pressed upon him that the decision required reconsideration. The appellant then preferred an appeal from the order of the learned Single Judge, dismissing the appeal *in limine*. The appeal being Special Civil Appeal No. 82 of 1962, was dismissed summarily on July 20, 1962, on the ground that the question raised in the appeal was concluded by the decision of the Division Bench aforesaid. The Division Bench refused to refer the question to a larger bench and preferred to follow that decision. The appellant moved the High Court for special leave to appeal to this court which was granted, and that is how the appeal has come to this Court. The Division Bench pointed out that though

(1) 1962 All. L.J. 544.

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the question had "been exhaustively dealt with by this Court in the case of *Sarjudei* v. *Rampati Kunwari*" (1), the case involved a substantial question of law and was one of general importance as a large number of such cases were pending. In view of those considerations, the Court granted the certificate under Art. 133 (1) (c) of the Constitution. Curiously enough the Court granted costs to the appellant against the First Additional District Judge, Allahabad, who was the opposite party No. 1 in the High Court in those proceedings.

Before we deal with the main point in controversy, it is necessary to point out that this Act had come up for consideration before a Division Bench (Agarwala and Mulla, JJ.) in First Appeal No. 60 of of 1955, and its judgment dated February 18, 1955, is reported in the case of *Cyril Spencer* v. *M. H. Spencer*. (2). The learned Judges held that the right of appeal was not merely a matter of procedure but a matter of substantive right and the right of appeal from the decision of an inferior tribunal to a superior tribunal becomes a vested right at the date of the institution of the suit. They also relied upon the provisions of s. 3 of the Act, which will hereinafter be dealt with, and came to the conclusion that the right of coming up in appeal to the High Court having become vested before the Act came into force could not be affected by the provisions of the Act, and that, therefore, all appeals which lay to the High Court under the pre-existing law would still continue to lie in the High Court if the suit had been instituted prior to the coming into effect of the Act. In the result they allowed the appeal to be filed in the High Court. That case is a clear authority for the proposition that the Act, by s. 3 (1), had saved pending appeals in the High Court from the operation of the Act. But it appears that in view of the pendency of a large number of first appeals involving valuations of ten thousand rupees or less,

(1) 1962 All. L. J. 544. (2) 1955 All. L.J. 307.

the High Court was inclined to reconsider the matter, and, therefore, gave notice to the parties in a number of pending first appeals and heard the matter afresh. The judgment of the Court, by a Division Bench consisting of Desai, C. J., and Ramabhadran, J., is reported in *Surjudei* v. *Rampati Kunwari* (1). This time the Bench came to a conclusion different from that of previous Division Bench of the same High Court. It is the correctness of this decision which is challenged before us.

Turning to the merits of the decision, it appears that the High Court recognised the legal position that the Act had no restrospective operation, and that the right to appeal to a superior tribunal is a vested right which is determined at the date of the institution of the suit or proceeding. The High Court, in that view of the matter, accepted the position that in spite of the Act the pending appeal in that Court could be disposed of by it. But it took the view that the Act did not have the effect of amending the provisions of s. 24 of the Code of Civil Procedure, under which "the right of a litigant to an appeal is always subject to the right of the High Court to transfer it under s. 24." The High Court further took the view that this overriding power of the High Court to transfer a case to a competent Court was in supersession of the party's right to have the case tried by a particular Court. The High Court rightly raised the question whether District Judges or Additional District Judges were competent to dispose of cases like the one before them. The question thus rightly posed has been wrongly answered by reliance upon the doctrine that the right of the High Court to transfer a case from itself to another Court or from one Court to another overrides the right of a party to have its case determined by a particular Court. In effect, the High Court took the view that after the enforcement of the Act, appeals involving valuations up to

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ten thousand rupees could be dealt with by District Judges or Additional District Judges, and, therefore, they were competent to deal with them, though such appeals could not have been entertained by those Courts on the date on which they were preferred, having in view the date of the decision of the suit. The Court further held that it was irrelevant to consider whether or not the Act had been given retrospective effect. The High Court emphasized the fact that appeals like the one before them had been transferred to the District Courts not under the provisions of the Act but under s. 24 of the Code of Civil Procedure. In this connection, the High Court proceeded to make the following observations:

> "It is enough that the U. P. Amending Act contains no provision taking away our power to transfer the appeals under Sec. 24, C. P. C., or no provision laying down that the District Judges are not competent to hear appeals arising out of suits instituted prior to its enforcement. There is nothing in the provisions of Sec. 3 of the Act to render the District Judges incompetent to hear them. Sub-Sec. (1) reserves rights acquired prior to the enforcement, but as we have explained earlier, if the right of the parties to the appeals is affected, it is not on account of our enforcing any provision of it but on account of our exercising our power under Sec. 24, C. P. C".

With all respect, the High Court has completely misdirected itself in interpreting the provisions of s. 3 (1) of the Act, which must govern this case. That section runs as under :

> "Any amendment made by this Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, or any right, title, obligation or liability

already acquired, accrued or incurred or any release or discharge of or from any debt, decree, liability, or any jurisdiction already exercised, and any proceeding instituted or commenced in any Court prior to the commencement of this Act shall, notwithstanding any amendment herein made continue to be heard and decided by such Court."

The High Court has not given effect to the words "any proceeding instituted or commenced in any Court prior to the commencement of this Act shall, notwithstanding any amendment herein made continue to be heard and decided by such Court." Now, giving full effect to the words just quoted of s. 3(1) of the Act, the High Court and the High Court alone would be competent to hear and decide the appeals pending before it. In other words, the District Courts were not competent to hear such appeals, and therefore, the High Court could not have transferred those appeals to be heard by the District Judge or Additional District Judge, inasmuch as s. 24 postulates that the Court to which the suit or appeal or other proceeding is transferred should be competent to try or dispose of the same. On the date the appeal in question was preferred in the High Court, the District Courts were not competent to hear such a case. The competency of those Courts to hear such cases arises by virtue of the amendment to s. 21 of the Civil Courts Act, aforesaid. We are here not concerned with the question whether in the absence of a saving clause, like the one introduced by s. 3(1), the High Court would have been right in taking recourse to s. 24 of the Code of Civil Procedure. But in the face of s. 3(1) of the Act, it is impossible to hold that the District Courts were competent to hear appeals of the valuation of ten thousand rupees or less in suits decided before the Act came into force, and appeals from which were pending before the High Court.

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The High Court was led to the conclusion to which it came in view of the declared objects and reasons for the Amending Act. As a matter of fact, the High Court has relied upon the following extract from the Statement of Objects and Reasons:

> "In order to reduce the volume of work in the High Court and to ensure quicker disposal of appeals, the Bengal, Agra and Assam Civil Courts Act, 1887, is proposed to be amended so that appeals in cases from Rs. 5,000/- to Rs. 10,000/- in valuation may be heard by District Judges".

It is true, as pointed out by the High Court, that the object behind the amendment in question was to give relief to the High Court. But the High Court was in error in thinking that the legislature amended the law as "the relief was required instantaneously." The Amending Act may have given relief to the High Court in respect of appeals to be instituted after the commencement of the Act, but it did not grant the much required relief to that Court in respect of pending first appeals. On a plain reading of the provisions of s. 3(1), it is clear that the legislature did not grant that very much needed instantaneous relief. If it intended to do so, it has failed to give effect to its intentions by the words used in s. 3(1).

The High Court was fully cognizant of the legal position that District Judges could hear only such appeals, on transfer by the High Court, as they were competent to hear and dispose of. But its conclusion that such competency was there on the date the Act came into effect, suffers from the infirmity that it does not give effect to the concluding words of s. 3(1).

For the reasons aforesaid, it must be held that the High Court had not taken the correct view of the legal position. The appeal is accordingly allowed

and the order of the High Court transferring the appeal to the District Judge or the Additional District Judge is set aside. It is directed that the appeal be heard by the High Court itself, in the absence of any law to the contrary. There will be no order as to costs throughout, as the main respondent in this Court and below was a Court itself, and ordinarily no costs are granted against a Court.

Appeal allowed.

STATE OF WEST BENGAL

v.

UNION OF INDIA

1962

December, 21.

(B. P. SINHA, C. J., JAFER IMAM, K. SUBBA RAO, J. C. SHAH, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Land Acquisition—State property—Coal bearing areas—Acquisition by Union of India—Parliament, power to enact law—Indian Constitution, if not federal—Sovereignty, if lies in States also—Fundamental rights, whether can be claimed by States—"Person" and "Property", Connotation of—Coal Bearing Areas (Acquisition and Development) Act, 1957 (XX of 1957)—Constitution of India, Arts. 13, 31, 73, 162, 245, 246, 248, 249, 254, 294, 298, Seventh Schedule, List I Entries 52, 54, 97, List II Entries 23, 24, List III Entry 42.

Under the Coal Bearing Areas (Acquisition and Development) Act, 1957, enacted by Parliament, the Union of India proposed to acquire certain coal bearing areas in the State of West Bengal. The State filed a suit contending that the Act did not apply to lands vested in or owned by the State and that if it applied to such lands the Act was beyond the legislative competence of Parliament.

Held, (per Sinha C. J., Imam, Shah, Ayyangar and Mudholkar, JJ.), that upon a proper interpretation of the relevant