



2024:DHC:8097-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 984/2024 and CM APPLs. 57883-85/2024

SHIV PRAKASH KATIYARAppellant

Through: Mr. R.K. Saini, Advocate

versus

JAWAHAR LAL UNIVERSITY & ORS.Respondents

Through: Mr. Subhrodeep Saha and Ms.
Radhika Kurdukar for Ms. Monika Arora,
for R1 & 4

Mr. Apoorv Kurup and Ms. Nidhi Mittal,
Advocates for R3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **16.10.2024**

C. HARI SHANKAR, J.

1. WP (C) 9829/2015 was instituted by the appellant against the Jawaharlal Nehru University¹, the University Grants Commission and the Union of India, of which JNU was admittedly the main respondent. The writ petition assailed an order dated 7 July 2015 whereby JNU rejected the appellant's representation to extend his tenure as Research Associate. Additionally, among other reliefs, the appellant sought quashing of order dated 27 July 2015 whereby JNU had demanded, from the appellant, ₹ 55,274/- for overstaying in the

¹ "JNU" hereinafter



flat in the Subansir Mahanadi Hostel² allotted to him.

2. Notice was issued by a learned Single Judge of this Court, in the writ petition, on 19 October 2015. The petition is, since, pending before this Court.

3. During the pendency of the writ petition, the petitioner was evicted from the flat in his occupation in the Hostel. On 11 September 2024, the authorities in the JNU double-locked the room in the appellant's occupation in the Subansir hostel, with all his belonging inside the room. On the same day, a notice was issued by the Senior Warden of the Hostel to the appellant, calling on the appellant to clear all pending dues, including amounts payable on account of illegal overstay in the flat in the hostel, within two weeks.

4. The appellant, in the circumstances, filed CM 57110/2024 in the existing WP (C) 9829/2015, praying for issuance of appropriate directions to the JNU to immediately allow the appellant to vacate the flat in his occupation and remove his belongings therefrom.

5. The aforesaid CM 57110/2024 came up for hearing before a learned Single Judge of this Court on 27 September 2024, on which date the following order was passed:

“CM APPL. 57110/2024 [Seeking directions]

² “the Hostel” hereinafter



1. This is an Application filed on behalf of the Petitioner seeking directions to Respondent Nos. 1&2 to allow the Petitioner to vacate the subject premises.

2. *Prima facie*, it is not disputed that after the services of the Petitioner came to an end in 2015, he has continued to occupy the subject premises even for the next ten years.

2.1 Learned Counsel for the Petitioner submits that he was not required to vacate the subject premises as he was not called upon to do so by the Respondent No.1.

3. Issue Notice.

3.1 Learned Counsel for the Respondent Nos. 1 & 2 accepts notice and seeks time to file a Reply.

4. Learned Counsel for Respondent No.3 submits that he does not wish to file any Reply.

5. None appears for Respondent No.4.

5.1 On steps being taken, let notice be served upon the Respondent No.4 *via* all modes including electronically within one week. *Dasti* in addition. An Affidavit of service be filed before the next date of hearing.

6. Reply, if any, be filed by Respondent No.4 within three weeks.

6.1 Rejoinder, if any, be filed before the next date of hearing.

7. List before the concerned Registrar on date already fixed. i.e. 30.09.2024.

8. List before Court on 12.12.2024.”

6. The appellant has filed the present Letters Patent Appeal, challenging the aforesaid order.

7. We queried of Mr. R.K. Saini, learned Counsel for the appellant, as to how the present appeal was maintainable. Admittedly, Letters Patent Appeals, in this Court, lie under Clause 10 of the



Letters Patent of the High Court of Lahore, as is applicable to this Court. Clause 10 reads thus:

“10. 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 judgement passed in the of 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, 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 or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgement of one Judge of the High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgement declares that the case is a fit one for appeal, but that the right of appeal from other judgements of Judges of the said High Court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.”

8. Thus, an LPA lies only against a judgment. On being further queried as to how the impugned order of the learned Single Judge qualifies as a judgment for the purposes of Clause 10 of the Letters Patent, Mr. Saini places reliance on the decision of the Supreme Court in *Shah Babulal Khimji v Jayaben D. Kania*³, which is generally regarded as the authority on the point. Mr. Saini has drawn attention to para 106 of the decision in *Shah Babulal Khimji*, which reads thus:

“106. Thus, the only point which emerges from this decision is that whenever a Trial Judge decides a controversy which affects

³ AIR 1981 SC 1786



valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent.”

9. A bare reading of para 106 of *Shah Babulal Khimji* reveals that, in order for an order to constitute a “judgment” within the meaning of Clause 10 of the Letters Patent, it has to satisfy two indicia. It must decide a controversy, and the decision must affect valuable rights of one of the parties. *Cumulative satisfaction* of both these conditions alone would render an order a “judgment”, as would be appealable by way of LPA.

10. Mr. Saini’s contention is that a holistic reading of the decision in *Shah Babulal Khimji* would reveal that any decision which affects the valuable rights of one of the parties to the litigation would qualify as a “judgment”, even if it is not determinative of any issue before the Court.

11. We cannot agree, as that would conflict with the plain words of para 106 of the decision in *Shah Babulal Khimji*.

12. The scope and ambit of the expression “judgment”, within the meaning of Clause X of the Letters Patent, came up for consideration before a Full Bench of this Court in *UOI v Usha Sodhi*⁴. Paras 7 to 16 of the report address the issue, thus:

“7. At this juncture, we think it necessary to deal in some detail as to what a judgment signifies. Clause 10 not only makes the High Court a Court of appeal from other Civil Courts and Courts subject to the High Court's special superintendence but also invest it with

⁴ AIR 2000 Del 405



appellate jurisdiction in such cases as may, after the date of publication of Letters Patent, be made subject to appeal to it by any law made by a competent legislative authority for India.

8. "Judgment" has been defined in the Code of Civil Procedure, 1908 (in short CPC) indicating that it is a statement of grounds of decree or order. *It is judicial determination, decision of a Court. It denotes the reasons given for its decision.* The words "Judgment" and "Final Order" have acquired a technical meaning. "*Judgment*" means "*the declaration or final determination of the rights of the parties in the matter brought before the Court*" and "*final Order*" means an order which finally determines the rights of the parties and brings the case to end." (See **S. Kuppuswami Rao v King**⁵). These words were given the same meaning by the Privy Council in construing Section 109 of the CPC (See. **Ramchand Maujimal v Goverdhandas**⁶). By the federal Court in construing Section 205 of the government of India Act of 1935 (in **S. Kuppuswami's case supra**) and by the Apex Court in construing Articles 133 and 134 of the Constitution (See. **Sardar Syendna Tahar Saifuddin v State of Bombay**⁷, **Jethanand & Sons v State of U.P.**⁸, and **State of U.P. v Sajan Singh (Col)**⁹) Encyclopedia of Laws of England states that *judgment is the determination of a Court declaring rights to be recognised and remedies to be awarded between the parties upon facts found by the Court or jury or admitted by the parties or upon their default in the course of proceedings instituted for the redressal.*

9. Black defines it as *determination or sentence of law, pronounced by a competent judge or Court; as the result of an action or preceding instituted in or before such Court or Judge, affirming that upon the matters submitted for its decision, legal duty or liability does or does not exist.*

10. "Judgment" is *that which decides the case, one way or the other in its entirety and it does not mean a decision or order of interlocutory character, which merely decides some isolated point, not affecting the merits of result of the entire suit.* It is a remedy prescribed by law for redress of injuries; and suit or action is the vehicle or means of administering it. What that remedy may be, is, indeed the result of deliberation and study to point out; and therefore the style of the judgment is, not that it is decreed or resolved by the Court, for then the judgment might appear to be their own.

⁵ AIR 1949 FC 1

⁶ AIR 1920 PC 86

⁷ AIR 1958 SC 253

⁸ AIR 1961 SC 794

⁹ AIR 1964 SC 1897



11. In *State of Bihar v Ram Narain*¹⁰, which was dealing with a matter under Section 494 Cr.P.C.1898, it was held that the word "judgment" is a word of general import and means only *judicial determination or decision of a Court*. Even if judgment is to be understood in a limited sense it does not follow that an application during the preliminary enquiry...is excluded. In *Gurdit Singh v State of Punjab*¹¹, it was observed that judgment is *affirmation by law of the legal consequences attending, approved or admitted state of affairs of all facts*. Its recording gives an *initial confirmation of a pre-existing relation or establishes a new one on pre-existing grounds*. An order is the decision made during the progress of the cause, either prior to or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by pleadings and necessary to be disposed of before such issue can be passed upon by the Court, or necessary to be determined in carrying into execution of the final judgment.

12. Judgment as has been noticed in Corpus Juris Secundum Vol.48 is a word difficult to define or prescribe by limits or boundaries. It may be used in strict technical sense to final determination of the rights of the parties in an action or in general or popular sense indicating the decision or conclusion at which one has arrived upon a given question and in a specified and very limited use, it has been described as legalistic term for a particular record.

13. In Corpus Juris Secundum, (Vol.49) it has been stated that in its broadest sense, a judgment is a decision and sentence of the law given by a Court of justice or other competent Tribunal as a result of proceedings instituted therein or the final consideration and determination, of a Court on matters submitted to it in an action or proceedings, whether or not execution follows thereon. More particularly, *it is a judicial determination of matter submitted to a Court for decision which determines whether, a legal duty or liability, does or does not exist, or that with respect to a claim in suit, no cause of action exists or no defence exists*. In the broad sense a decision of any Court is a judgment, including Courts of enquiry, admiralty or probate. A judgment is the judicial act of a Court by which it accomplishes the purpose of its creation. It is *judicial declaration by which the issues are settled and the rights and liabilities of the parties are fixed as to the matters submitted for decision*. In other words, a judgment is the end of law; its rendition is the object for which jurisdiction is conferred and

¹⁰ AIR 1957 SC 389

¹¹ AIR 1974 SC 1791



exercise and it is the power by means of which a liability is enforced against a particular person.

To put it differently *a judgment is a judicial act which settles the issues, fixes rights and liability of parties and determines the proceedings*, and it is regarded as a sentence and is pronounced by the Court on the action or question before it. As a general rule decisions, opinions, findings or verdicts do not constitute a judgment or decree but merely form the basis on which the judgment is subsequently rendered.

14. In Halsbury's Laws of England, Vol. 26, (para 501) it has been stated that the words "order" and "judgment" are sometimes used as though 'order' was the genus of which 'judgment' was a species; e.g. "to constitute and order a final judgment nothing more is necessary than that *there should be a proper contestation, and a final adjudication between the parties*" (See *Re. Faithfull, ex parte Moore*¹²)

15. It is to be noted that *Hans Kumar's case (supra)* was based on two premises, namely, judgment of single Judge was not given in ordinary jurisdiction of the High Court but in special jurisdiction and therefore, that order was not a judgment. The two premises are inseparable from each other. One cannot exist without the other. The first premise expressed in *Hans Kumar's case* is no longer valid in view of the subsequent decision in *Gauri Shanker's case (supra)*. It would follow that second premise also ceased to be valid.

16. In view of what has been stated by the Apex court in *Gauri Shanker's case (supra)* the theory that an appeal takes colour from the original proceedings is not to be carried too far. Similarly view was also expressed by a Full Bench of this Court in the *Municipal Corporation of Delhi v. Kuldip Singh Bhandari and Ors*¹³. The three relevant aspects which need to be considered are:

- (1) The nature of Tribunal
- (2) The original proceeding before it, and
- (3) The nature of the decision given by it.

It would not be correct to say that because of Tribunal was not a Court or proceeding before it was not a suit or its decision was not a judgment but an award the High Court hearing an appeal against its decision would not be a Court or that its decision in the appeal would not be a judgment. The following observations in *National*

¹² (1885) 14 QBD 627

¹³ AIR 1970 Del 37



*Telephone Company Ltd v Postmaster General*¹⁴ clearly apply to such a case:

"Where by statutes matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same" (per Lord Parker of Waddington)."

13. In *Krishan Avtar v Om Prakash Gupta*¹⁵, the expression "judgment" within the meaning of Clause XII of the Letters Patent applicable to State of Jammu and Kashmir was held as implying "an order which effectively decide some right or liability in controversy between the parties to the main proceedings, irrespective of the fact whether such an order is final or made at any interlocutory stage". In the context of Clause X of the Letters Patent, applicable to Nagpur, a Division Bench of High Court of Madhya Pradesh, in *Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swaroopanand Saraswati v Ramji Tripathi*¹⁶ defined "judgment" thus:

"A 'judgment' within the meaning of clause 10 of the Letters Patent would have to satisfy two tests: First, the judgment must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned. Second, the judgment must involve the determination of some right or liability, though it may not be necessary that there must be a decision on the merits. But the adjudication of an application which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of clause 10 of the Letters Patent. An order transferring a suit from one Court to another is not a 'judgment, as it neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. It is only an application in a suit as a step towards determination of the controversy between the

¹⁴ (1913) AC 546

¹⁵ (1981) SCC Online J&K 37

¹⁶ AIR 1979 MP 50



parties in the suit.”

14. Not all interlocutory orders are excepted from the category of “judgment” for the purposes of appeal under the Letters Patent. In the context of Clause XV of the Letters Patent of the Madras High Court, the Supreme Court held, in ***Tamilnad Mercantile Bank Shareholders Welfare Association v S.C. Sekar***¹⁷ that “an interim injunction granted till disposal of the contempt petition would come within the ambit of the expression “judgment” for the purpose of Clause XV of the Letters Patent of the Madras High Court”.

15. In ***Oriental Insurance Company Ltd v Saraswati Bai***¹⁸, a Full Bench of the High Court of Madhya Pradesh held that “the word ‘judgment’ as used in Clause X of Letters Patent means a decision in an action whether final, preliminary or interlocutory *which decides either wholly or partially, but conclusively insofar as Court is concerned, the controversy which is the subject of action*”. In ***Life Insurance Corporation of India v Sanjeev Builders Pvt Ltd***¹⁹, it was held that, for an order to be a “judgment”, it was not always necessary that it should put an end to the controversy or terminate the suit. *An interlocutory order determining the rights of the parties in one way or the other would also be a “judgment”*.

16. Howsoever widely one may interpret the expression, the order under challenge, passed by the learned Single Judge in the present case, is not a “judgment”. It merely issues notice on the application

¹⁷ (2009) 2 SCC 784

¹⁸ 1994 SCC Online MP 199

¹⁹ (2018) 11 SCC 722



filed by the appellant. It does not decide any issue one way or the other. It does not even contain a tentative expression of opinion on the merits of the application or on its eventual fate.

17. If an order such as the one under challenge in the present case, which merely issues notice on an application, is to be treated as a “judgment” within the meaning of Clause X of the Letters Patent, every order passed by a Single Judge would become a judgment, appealable in LPA.

18. Considerable arguments were sought to be advanced by Mr. Saini on the merits of the case. Needless to say, no cognizance be taken thereof as, in view of the fact that the impugned order is not a “judgment” within the meaning of Clause X of the Letters Patent, the present LPA is not maintainable.

19. Resultantly, the LPA is dismissed with no orders as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 16, 2024/ar

Click here to check corrigendum, if any