Reserved on 09.08.2024
Delivered on 14.08.2024.
AFR

In Chamber

Case :- SECOND APPEAL No. - 507 of 2024

Appellant :- Ramnath Singh
Respondent :- Parshuram Singh (Deceased) And 13 Others
Counsel for Appellant :- Pradeep Kumar Rai,Prajyot Rai
Counsel for Respondent :- Harish Kumar Yadav

Hon'ble Kshitij Shailendra,J.

1. The instant second appeal has been filed against the judgment and decree drawn by First Appellate Court in Civil Appeal No.26 of 2010 and Civil Appeal No.22 of 2010, and, additionally, part of the judgment passed by the trial court in Original Suit No.289 of 1984 has also been assailed.

2. The Stamp Reporting Section has endorsed a report regarding requirement of filing separate second appeals arising out of each civil appeal.

3. Learned counsel for both parties have been heard at length against and in support of the said report and also on the point as to whether it is at all necessary to attach a copy of the decree of the first appellate court along with memo of second appeal, inasmuch as it is contended by Sri Prajyot Rai, learned counsel for the appellant, that it is not the requirement of law as per certain amended provisions of the Code of Civil Procedure, 1908. The Court, therefore, proceeds to deal with the said objection and contention.

4. The proceedings giving rise to instant appeal emanate from an Original Suit No.289 of 1984 instituted by the plaintiff-appellant against

the defendant-respondents claiming decree of permanent prohibitory injunction. The suit was partly decreed in favour of the plaintiff-appellant. Aggrieved by that part whereby the plaintiff's claim was not accepted, he filed Civil Appeal No.26 of 2010, whereas against partial decree against them, the defendants filed Civil Appeal No.22 of 2010. Both the said civil appeals were consolidated and have been decided by a common judgment dated 18.03.2024 dismissing the suit of the plaintiff-appellant in toto. By the same judgment, a third Civil Appeal No.23 of 2010 filed by the respondents of this appeal and arising out of a different suit, i.e. Original Suit No.477 of 1984, was also dismissed, however, the present appellant has no concern with Civil Appeal No.23 of 2010 and has not challenged that decree. Whereas, Civil Appeal No.26 of 2010 was dismissed, the Civil Appeal No.22 of 2010 was allowed and the present appellant is aggrieved as such.

5. It is contended on behalf of appellant that in the aforesaid background of proceedings, it is neither necessary to file another appeal nor to attach copy of any separate decree. It is further contended that even requirement to attach decree of the first appellate court is not necessary. In support of his submission, learned counsel has placed reliance upon Full Bench judgment of this Court in **Bhagwan Sahai Vs. Daryao Kunwar and another: AIR 1963 Allahabad 2010** in which, a situation with regard to different decrees drawn by civil appellate court arising out of single suit and two suits, was dealt with after placing reliance upon the judgment of the Supreme Court in **Narhari Vs. Shankar, AIR 1953 SC 419**. He also placed reliance upon Five Judges' Full Bench decision of this Court in **Jai Narain Har Narain and another Vs. L. Bulaqi Das s/o L. Munna Lal: AIR 1969 (Ald) 504**.

6. It is vehemently argued with the aid of written synopsis that till 1859, in India, there was no uniform codified law for the procedures to be followed in Civil Courts. For the first time in 1859, an organized form of Civil Procedure Code was introduced by passing the Civil Procedure Code (Act VII of 1859). The Code of 1859 was amended from time to time and was replaced by the Civil Procedure Code, 1877. This Code of 1877 was amended in 1878 and 1879 and the third Civil Procedure Code was enacted in 1882, which replaced the previous one. The Code of 1882 was also amended several times and, ultimately, the present Code of Civil Procedure, 1908 came in existence on January 1, 1909. The C.P.C was again extensively amended in the year 1976 by the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) which came into force on February 1, 1977 but the amendments made were not sufficient and, therefore, with a view to adjudicate upon civil cases in an expeditious manner, Justice Malimath Committee was appointed and, in pursuance to the recommendations of the Committee, C.P.C was again amended in 1999 and 2002.

7. It is further contended that the object of the Code is to consolidate and amend the laws relating to the procedure of Court of Civil jurisdiction. It is a consolidated Code which contains all the laws relating to the procedure to be adopted by Courts of Civil jurisdiction. It is designed to facilitate justice and is not a penal enactment that prescribes punishments and penalties. The provisions of C.P.C. should be construed liberally and technical objections should not be allowed to defeat justice. A procedural law is always an aid of justice, not in contradiction or to defeat the very object which is sought to be achieved and the procedural law always remains subservient to the substantive law.

8. Further contention is that by Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), a proviso was added under Order 41 Rule 1; sub-rule (3) was also added. Further submission is that Order 41 Rule 1 CPC was further amended in the year 2002 by Section 31(i) of Act No. 46 of 1999 which came in effect from 01.07.2002. The word 'judgement' has been incorporated by means of the amendment for "decree appealed from and (unless the Appellate Court dispenses therewith) of the judgement on which it is founded".

9. Learned counsel for the appellant also refers to Section 32 of the Amendment Act No. 46 of 1999, which came with effect from 01.7.2002 and which reads as follows:

> "Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed."

It is, therefore, submitted that since Order 41, Rule 1 CPC stood amended, there may be one appeal against separate judgments and decrees if two or more suits have been tried together and a common judgment has been delivered. The memo shall be accompanied by the copy of the judgment only though, earlier, it was necessary to file the copy of the decree also.

10. It is vehemently argued that in view of the Amendment Act No. 46 of 1999, the second appeal is to be preferred against a judgment and the High Court Rules are in conflict with the Code and are merely for supplementing the Code/ Act but under no stretch of imagination, the provisions as contemplated under the Allahabad High Court Rules, can override the Code of Civil Procedure, 1908 as the same are in the teeth of Amendment Act No. 46 of 1999. It is further argued that if

any State enactment/rules are in conflict with the Amended central Act, the provisions as contained in the central enactment will prevail if there is any inconsistency. Hence, the provisions contained in the Allahabad High Court Rules,1952 ceased to exist after 01.7.2002 by virtue of Section 32 of the Amendment Act No. 46 of 1999 which shall supersede the provisions as contemplated under Chapter V Rule 2 sub-rule (ii) in the Allahabad High Court, 1952 as the same are inconsistent with the central enactment. In support of his contention, learned counsel for the appellant has placed reliance upon a judgment of Kerala High Court in **Khaleel Vs. Aranjikkal Jamal Muhammed (in O.P. (C) Nos.28 of 2016 & 32 of 2016, decided on 30.11.2017)** and he submits that in case certain provisions made by State amendment are inconsistent with the amended Central Law, the State amendment shall cease to exist and it is the Central law that shall prevail.

11. Per contra, learned counsel for the respondents has placed reliance upon paragraphs no.6 and 7 of the judgment of Supreme Court in **M/S Ramnath Exports Pvt. Ltd. Vs. Vinita Mehta and another: (2022) 7 SCC 678,** which in fact note down contentions raised before Supreme Court, as under:-

> "6. Being aggrieved, the appellant preferred instant appeal and learned counsel present has contested the same on following grounds –
>
> a) The appellant had assailed the findings recorded by Trial Court by mentioning both the suit numbers alongwith payment of requisite court fee for the purpose of valuation on the basis of consolidated value of suits;
>
> b) The first appeal was admitted by High Court vide order dated 18.07.2008, but the same was dismissed after a decade without entering into the merits of the case;

c) While admitting the appeal, notice was issued on CLMA, i.e., application to seek permission to file single appeal impugning the common judgment and two decrees, but without deciding the said application, the preliminary objections raised by the respondents has been maintained causing serious prejudice to it;

d) The essence of rule of res-judicata is that the two proceedings should be so independent of each other that the trial of one cannot be confused with trial of other suit, but where two suits having common issue were tried together and disposed-off vide single judgment, can they be said to be two distinct and independent trials;

e) In effect, only one judgment was passed in the trial and suits were not clubbed but were consolidated for all purposes;

f) In support of the said contentions learned counsel would rely upon

i. State of Andra Pradesh & Ors. Vs. B. Ranga Reddy (thru LR's) & Ors., (2020) 15 SCC 681;

ii. Sri Gangai Vinayagar Temple & Anr. Vs. Meenakshi Ammal & Ors., (2015) 3 SCC 624;

7. Per contra, the counsel for the respondents has argued in support of the findings recorded in the impugned judgment and made the following submissions -

a. The appellant unilaterally preferred single appeal and paid the Court fee on the basis of consolidated value of suits, whereas, separate Court fee was to be calculated on each decree and affixed accordingly;

b. Appeal against decree in Civil Suit No.411 of 1989 can be filed before District Judge, having a limitation of 30 days as per Section 8 of Suits Valuation Act, 1887, whereas, looking to the valuation, appeal against decree in Civil Suit No.419 of 1993 lies before High Court having a limitation of 90 days. No such appeal against decree in Civil Suit No.411 of 1989 before District judge was preferred by appellant;

> c. The judgment and decree passed in Civil Suit No.411 of 1989 has attained finality inter-se parties since it was not challenged within the prescribed period of limitation;
>
> d. Consolidation of suits was done only for evidence and it does not mean that one appeal can be preferred since suits still retain their separate identity. Even assuming that the consolidation was for all purposes, yet the procedure for preferring an appeal cannot be waived or by-passed;
>
> e. Since the day of notice in first appeal, objection has been raised for filing only one appeal and still the said defect was not rectified by the appellant;
>
> f. Learned counsel placed reliance on following judgments to substantiate the submissions
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> i. Sri Gangai Vinayagar Temple & Anr. Vs. Meenakshi Ammal & Ors., (2015) 3 SCC 624;
>
> ii. V. Natarajan Vs. SKS Ispat & Power Ltd. & Ors., Civil Appeal No.3327 of 2020)
>
> iii. B. Santoshamma & Anr. Vs. D. Sarla & Anr., 2020 SCC OnLine SC 756;"

12. Further reliance has been placed upon paragraphs no.21 and 22 of the judgment in **Sri Gangai Vinayagar Temple and another Vs. Meenakshi Ammal and others: (2015) 3 SCC 624**, which read as under:-

> "21. On the other hand, the verdict of Full Bench of the Allahabad High Court in Zaharia vs. Debia ILR (1911) 33 All 51 and decisions of the Calcutta High Court in Isup Ali vs. Gour Chandra Deb 37 Cal LJ 184: AIR 1923 Cal 496 and of the Patna High Court in Mrs. Getrude Oastes vs. Mrs Millicent D'Silva ILR 12 Pat 139 : AIR 1933 Pat 78 are of the contrary persuasion. These decisions largely proceeded on the predication that the phraseology "suit" is not limited to the Court of First Instance or Trial Court but encompasses within its domain proceedings before the Appellate Courts; that non-applicability of res judicata may lead to inconsistent decrees and conflicting decrees, not only due to multiplicity of decrees but also due to

multiplicity of the parties, and thereby creating confusion as to which decree has to be given effect to in execution; that a decree is valid unless it is a nullity and the same cannot be overruled or interfered with in appellate proceedings initiated against another decree; that the issue of res judicata has to be decided with reference to the decrees, which are appealable under Section 96 of the CPC and not with reference to the judgment (which has been defined differently), but with respect to decrees in the CPC; that non-confirmation of a decree in appellate proceedings has no consequence as far as it reaching finality upon elapsing of the limitation period is concerned in view of the Explanation II of Section 11, that provides that the competence of a Court shall be determined irrespective of any provisions as to right of appeal from the decision of such Court; and that Section 11 of the CPC is not exhaustive of the doctrine of res judicata, which springs up from the general principles of law and public policy.

22. Procedural norms, technicalities and processal law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the Courts by Section 151 of the CPC, as clarified by this Court in Chitivalasa Jute Mills vs. Jaypee Rewa Cement (2004) 3 SCC 85. In the instance of suits in which common Issues have been framed and a common Trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon

> metamorphoses into the character of a "former suit". If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. Statutory law and processal law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the Tenant diligently filed an appeal against the decree at least in respect of O.S. 5/78, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all."

13. It is further sought to be argued that in case of non-filing of separate appeals, threat of resjudicata may also come into picture and that would create multiple complications.

14. Having heard learned counsel for the parties, first of all the Court deals with the submissions advanced by the learned counsel for the appellant as regards applicability of amended provisions of Order 41 Rule 1 CPC which were incorporated by the Amendment Act 1999 (46 of 1999). It may be noted that when a suit is decided by the court of first instance at district level, unless the judgment is passed by the District Judge or Additional District Judge, first appeal against the decree drawn would lie before the District Judge under Section 96 of the Code of Civil Procedure. In that event, memorandum of appeal shall be signed by the appellant or his pleader and shall be accompanied by a copy of the "judgment". Prior to amendment made by Act No.46 of 1999, requirement was to attach copy of the decree appealed from unless the appellate court could dispense with the said

requirement. The requirement of filing judgment was already there which has been taken away by the amended provision.

15. As far as second appeals are concerned, by virtue of Order XLII Rule 1 CPC, provisions of Order XLI CPC shall, in so far as may be, applicable to the second appeals, i.e. appeals from appellate decree. For a ready reference, Order XLII Rule 1 CPC is reproduced as under:-

> "**1. Procedure.-** The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees."

16. Since a second appeal is filed against the appellate decree drawn by the first appellate court, even if applicability of Rule 1 of Order XLI is examined in the light of Rule 1 of Order XLII, as far as requirement of attaching or non-attaching decree appealed against, it would be worthwhile to mention that the procedure to file an appeal, either against the original decree or against the appellate decree, would be governed by the Allahabad High Court Rules, 1952, which have been framed in exercise of constitutional powers under Article 225 of the Constitution of India. Chapter IX contained in Part-II of the Rules speaks of "**Civil Jurisdiction**" and Rule 8 of Chapter IX needs a reference here in order to appreciate as to the requirement of documents to accompany memorandum of appeal. Rule 8 of Chapter IX reads as under:-

> "**8. Documents to accompany memorandum of appeal or revision application.-** Every memorandum of appeal or application for revision shall be accompanied by-
>
> (a) a copy of the decree or formal order against which the appeal or application is directed;
>
> (b) a copy of the judgment upon which such decree or formal order is founded;

> (c) a copy of the judgment of the Court of first instance where the appeal or application is directed against an appellate (or a revisional) decree or order;

17. It is, therefore, apparent that though amended Rule 1 of Order XLI CPC does not require attaching a copy of decree appealed from, there is no corresponding amendment made in High Court Rules, 1952 as far as requirement of annexing documents to a memorandum of appeal is concerned. Apparently, the decree or formal order against which appeal is directed, has to be mandatorily attached and that is why whenever such compliance is not made by any appellant, a defect is reported by the Stamp Reporting Section to that effect. However, it is clarified that as per sub-rule (c) of Rule 8 of Chapter IX when a second appeal is filed, copy of decree of the court of first instance need not be annexed and annexing copy of the judgment of that court would suffice. The submission of learned counsel based upon Section 31 of the Amendment Act, 1999, therefore, cannot be accepted.

18. In so far as Section 32 of the Act, 1999, the provision has been mis-interpreted by the learned counsel of the appellant and it relates to any amendment inserted in the principal Act, i.e. Code of Civil Procedure, prior to amendment made in 1999, by a State Legislature or High Court before the commencement of the amendment Act and those amendments which are inconsistent with the provisions of the principal Act, i.e. CPC before amendment, shall stand repealed but, certainly, subject to savings described under sub-section (2) of Section 32. The repeal clause contained under Section 32 of the Act of 1999 cannot be stretched to the extent of superseding or nullifying the High Court Rules, 1952 enacted under constitutional powers conferred by Article 225 of the Constitution of India. Promulgation of High Court Rules, 1952 or any provision contained therein cannot be treated as

"State Amendment" incorporated in the Code of Civil Procedure as applicable in the State of U.P. and argument of learned counsel for the appellant on that line has no substance. The judgment of Kerala High Court in **Khaleel (supra)** is also of no help to the appellant as there was no issue before the Kerala High Court as to whether a separate appeal would lie from every decree or whether, as per the concerned High Court Rules, the requirement of annexing decree drawn by the appellate court would stand dispensed with. The Kerala High Court was dealing with State amendments made in CPC and the judgment was given in that background.

19. At this Stage, it would be apt to refer definition of "decree" as contained in Section 2(2) of CPC, which reads as under:-

> "2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within1*** section 144, but shall not include -
>
> (a) any adjudication from which an appeal lies as an appeal from an order, or
>
> (b) any order of dismissal for default.
>
> Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

20. Here, reference of Order 8 Rule 6-A should also be made where filing of counter-claim by a defendant is contemplated. The provision reads as under:-

> "**6-A(1)** A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the

> plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:
>
> Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.
>
> **(2)** Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.
>
> **(3)** The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.
>
> **(4)** The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints."

21. In view of sub-rule (2) of Rule 6-A of Order 8, counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit and as per sub-rule (4), counter-claim shall be treated as a plaint and governed by the Rules applicable to plaints.

22. In view of the above discussion of legal position, it can safely be concluded that if a single suit gives rise to different first appeals, without there being any counter-claim or another consolidated suit, the decree drawn in the said single suit would conclusively determine rights of the parties and irrespective of two first appeals arising from the single judgment/ decree, necessity to file two separate second appeals would not arise. However, situation would be different if, either two suits are decided by a common judgment or there is a counter-claim in the single suit, in such event, there would be two decrees drawn by the court of first instance and if two first appeals are filed arising from such two decrees, certainly, there shall have to be two second appeals.

23. Now, coming to the necessity of filing a single or two appeals in the instant case, it may be noted that since decrees drawn in Civil Appeals No.26 of 2010 and 22 of 2010, either *in toto* or to some extent, have been challenged, in view of the decision of **Narhari (supra), Bhagwan Sahai (supra)** and **Jai Narain Har Narain (supra)**, since there was a single suit and one trial, one finding and one decision, irrespective of the fact that two decrees may or could have been drawn up, there need not be two separate appeals. The threat of resjudicata as sought to be argued by the respondent's counsel in the light of judgments in **M/S Ramnath (supra)** and **Sri Gangai Vinayagar (supra)** has been dealt with by the Supreme Court observing that such question arises only when there are two suits but not when there is a single suit.

24. In view of the above discussion, this Court is of the considered opinion that the amended provisions of Rule 1 of Order XLI CPC do not directly or indirectly nullify or dispense with requirement of attaching certified copy of the decree drawn by the first appellate court as per Rule 8 of Chapter IX of the High Court Rules, 1952. Since, in the instant case, consolidated judgment has been passed in two civil appeals arising from a single suit, the objection endorsed by the Reporting Section, as regards filing of two separate appeals, stands overruled and single second appeal, in the present case, is held to be maintainable, without there being necessity to file another second appeal from the same decree/ judgment.

25. The Stamp Reporting Section shall comply with the directions contained in paragraphs no.17 and 22 of this order while reporting other second appeals filed henceforth.

26. Registrar (Compliance) is directed to send a copy of this order to the Reporting Section to ensure compliance of the directions issued under this order.

27. **Put up as fresh on 31.08.2024**.

Order Date :- 14.8.2024
AKShukla/-