REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1984 OF 2022
[Arising out of SLP(C) No. 4080 of 2022]

SHYAM SEL AND POWER LIMITED AND ANOTHER **...APPELLANT(S)**

VERSUS

SHYAM STEEL INDUSTRIES LIMITED **...RESPONDENT(S)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. This appeal challenges the judgment and order passed by the Division Bench of the High Court of Calcutta dated 24th December 2019, arising out of the order passed by the learned

Single Judge of the High Court dated 2nd April 2019, by which the learned Single Judge had granted time to the appellants-defendants to file affidavit-in-opposition and directed to post the matter after three weeks. By the said order, the learned Single Judge also directed the appellants-defendants to maintain weekly accounts of sale of the products covered by Class 6, which are sold under the mark 'SHYAM'.

3. The facts in the present case are not much in dispute. The respondent-plaintiff had filed a suit against the appellants-defendants for infringement of trade mark and passing off. It is the case of the respondent-plaintiff that it has trade mark registration in respect of the word 'SHYAM' and diverse label marks wherein the word 'SHYAM' features prominently. Both the respondent-plaintiff and the appellants-defendants manufacture and sell, inter alia, Thermo-Mechanically treated bars (hereinafter referred to as "TMT bars"). It is the case of the respondent-plaintiff that in the year 2015, it came to know that the appellants-defendants were using the mark 'SHYAM' in

their products. The respondent-plaintiff therefore, through its advocate, objected to such use. It is the case of the respondent-plaintiff that the appellants-defendants agreed to phase out the products that they had manufactured with the mark 'SHYAM' and not to use the said mark 'SHYAM' on their products in future.

4. It is further the case of the respondent-plaintiff that the appellants-defendants had applied for registration of the mark 'SHYAM INFRA'. The respondent-plaintiff had filed its objection to it. It is further its case that since the appellants-defendants did not file their counter-statement, the application lapsed and was treated as abandoned.

5. It is further the case of the respondent-plaintiff that towards the end of 2018, the appellants-defendants started to use the word 'SHYAM METALICS' on the packaging of their TMT bars. According to respondent-plaintiff, though the appellants-defendants had used the word 'SHYAM' on their invoices and stationeries, they had not used the said word

'SHYAM' on their wrappers in which their TMT bars were packed. According to the respondent-plaintiff, this was done by the appellants-defendants only to take advantage of the growing and expanding business of the respondent-plaintiff and with an intention that the products manufactured and sold by the appellants-defendants could be passed off as those of the respondent-plaintiff. In this background, the respondent-plaintiff filed a civil suit being CS No. 63 of 2019 before the learned Single Judge of the High Court of Calcutta, claiming infringement of their registered trade mark 'SHYAM' and its variants and also for passing off by the appellants-defendants.

6. Along with the suit, an application being GA No.857 of 2019 in CS No. 63 of 2019 for temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") came to be filed. The said application basically claimed an order of injunction restraining the appellants-defendants from infringing the respondent-plaintiff's trade mark 'SHYAM' and its variants and in

particular, trade mark registration No. 987596. The said ssapplication sought an injunction restraining the appellants-defendants from, in any manner, passing off and enabling others to pass off the respondent-plaintiff's products by use of trade marks comprising the word 'SHYAM' or any other trade mark similar thereto.

7. The said suit and the application for temporary injunction came to be filed in the month of March, 2019. The application came up for consideration for grant of ad-interim injunction before the learned Single Judge on 2nd April 2019. The learned Single Judge made a prima facie observation that he was of the view that 'SHYAM' being a part of the business name of the appellants-defendants, no injunction should be passed to restrain the appellants-defendants from using the said word 'SHYAM' on their packaging. The learned Single Judge deemed it appropriate to grant time to the appellants-defendants to file affidavit-in-opposition, which was directed to be filed within two weeks from the date of the said order. It was also clarified that

no prayer for extension of time shall be entertained. The learned Single Judge directed the matter to be listed after three weeks. Vide the said order, the learned Single Judge also directed the appellants-defendants to maintain weekly accounts of sale of the products covered by Class 6, which are sold under the mark 'SHYAM'. The learned Single Judge also clarified that the observation made by him in the said order was prima facie for the purpose of passing an order at the ad-interim stage and the same would not have any relevance at the time of considering and deciding the said application after exchange of affidavits.

8. Being aggrieved by the said order of the learned Single Judge, the respondent-plaintiff filed an appeal before the Division Bench of the High Court. The Division Bench of the High Court by the impugned judgment and order dated 24th December 2019 though, has observed that "the order of the learned Single Judge dated 2nd April 2019 is modified", but in effect, has allowed the appeal and granted an injunction

restraining the appellants-defendants from, in any way, manufacturing, selling or advertising their goods with the mark 'SHYAM' or with a label or device containing the mark 'SHYAM' till the disposal of the suit. Being aggrieved thereby, the present appeal.

9. This Court, while issuing notice on 16th June 2020, had stayed the impugned judgment and order. The respondent-plaintiff had therefore filed an application for vacating stay. However, this Court found it appropriate to decide the main appeal itself on merits. As such, we have heard learned Senior Counsel for the parties at length.

10. Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellants-defendants submitted that the appeal filed by the respondent-plaintiff before the Division Bench of the High Court was not tenable. Relying on the judgment of this Court in the case of ***Shah Babulal Khimji v. Jayaben D. Kania and Another***[1], learned Senior Counsel submitted that

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1 **(1981) 4 SCC 8**

the order passed by the learned Single Judge dated 2nd April 2019 could not be construed to be a 'judgment' within the meaning of Clause 15 of the Letters Patent of the High Court (hereinafter referred to as "Letters Patent") and as such, the appeal itself was not maintainable. He submitted that vide judgment and order impugned before the Division Bench of the High Court, the learned Single Judge had only granted time to file the reply and had neither granted nor refused an interim injunction. Shri Rohatgi submitted that the order of the learned Single Judge is neither a final judgment nor a preliminary judgment nor an intermediary/interlocutory judgment. The learned Senior Counsel submitted that the order passed by the learned Single Judge would not fall in any of the categories carved out by this Court in para (120) of its judgment in the case of ***Shah Babulal Khimji*** (supra).

11. Shri Rohatgi further submitted that in any case, the view taken by the learned Single Judge could not be construed to be either impossible or perverse, warranting interference. The

learned Senior Counsel relies on the judgment of this Court in the case of ***Wander Ltd. and Another v. Antox India P. Ltd***[2]. Shri Rohatgi further submitted that the Division Bench of the High Court has in fact usurped the jurisdiction of the learned Single Judge to decide an application under Order XXXIX Rules 1 and 2 CPC. Relying on the judgment of this Court in the case of ***Monsanto Technology LLC Through the authorized representative Ms Natalia Voruz and Others v. Nuziveedu Seeds Limited Through Director and Others***[3], he submitted that it was impermissible for the Division Bench of the High Court to do so.

12. Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the respondent-plaintiff submitted that the Division Bench of the High Court had rightly interfered with the order passed by the learned Single Judge. He submitted that it is a settled principle of law that an order of injunction would be issued wherever an infringement of a registered trade

2 **1990 Supp SCC 727**
3 **(2019) 3 SCC 381**

mark is established. He relies on the recent judgment of this Court in the case of ***Renaissance Hotel Holdings Inc. v. B. Vijaya Sai and Others***[4]

13. Insofar as the objection of the appellants-defendants with regard to maintainability of the appeal before the Division Bench of the High Court is concerned, Shri Kaul would submit that the view taken by this Court in the case of ***Shah Babulal Khimji*** (supra) would rather support the case of the respondent-plaintiff than that of the appellants-defendants. He submitted that since a vital and valuable right of the respondent-plaintiff was infringed by non-grant of ad-interim order by the learned Single Judge, the appeal was very much tenable. He submitted that it is not in dispute that the respondent-plaintiff is the registered owner of the trade mark 'SHYAM'. As such, once the infringement thereof was brought to the notice of the learned Single Judge, the learned Single Judge ought to have granted ad-interim relief restraining the

4 **2022 SCC OnLine SC 61 [Civil Appeal No.404 of 2022 dated 19.01.2022]**

appellants-defendants from using the said trade mark and passing off their goods as that of the respondent-plaintiff. He therefore submitted that no interference is warranted in the present appeal.

14. Though both the parties have addressed this Court at length on merits of the matter and have also taken us through voluminous documents, we do not find it necessary to go into those issues. The present appeal arises out of an order passed by the Division Bench of the High Court in an intra-court appeal challenging the order passed by the learned Single Judge vide which the learned Single Judge had granted time to the appellants-defendants to file affidavit-in-opposition and postponed the hearing of the application seeking injunction.

15. We are of the considered view that any observation on merits by this Court would prejudice the rights of either of the parties and therefore, we are restricting ourselves to consider the question with regard to tenability of the appeal against the

order of the learned Single Judge and the correctness of the approach of the Division Bench of the High Court.

16. An intra-court appeal lies to the Division Bench of the High Court under Clause 15 of the Letters Patent. Clause 15 of the Letters Patent enables a party to appeal to the Division Bench of the High Court against an order of the Single Judge. A three-Judge Bench of this Court in the case of ***Shah Babulal Khimji*** (supra) had an occasion to consider the question as to what would be meant by the term 'judgment' used in Clause 15 of the Letters Patent. In the said case, the plaintiff had filed a suit on the original side of the Bombay High Court for specific performance of a contract and prayed for an interim relief by appointing a receiver of the suit-property and injuncting the defendant from disposing of the suit-property during the pendency of the suit. The Single Judge of the High Court after hearing the notice of motion had dismissed the said application. The plaintiff therefore filed an appeal before the Division Bench of the High Court. The Division Bench of the

High Court held that the order of the Single Judge refusing to appoint a receiver and to grant an injunction could not be construed to be a 'judgment' as contemplated by Clause 15 of the Letters Patent. Being aggrieved thereby, the plaintiff had approached this Court. Justice S. Murtaza Fazal Ali, speaking for himself and Justice Varadarajan, observed thus:

> **109.** Clause 15 makes no attempt to define what a judgment is. As letters patent is a special law which carves out its own sphere, it would not be possible for us to project the definition of the word "judgment" appearing in Section 2(9) of the Code of 1908, which defines "judgment" into the letters patent:
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> > "'Judgment' means the statement given by the Judge of the grounds of a decree or order."
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> **110.** In *Mt. Shahzadi Begam*, v. *Alak Nath* [AIR 1935 All 620 : 1935 ALJ 681 : 157 IC 347] , Sulaiman, C.J., very rightly pointed out that as the letters patent were drafted long before even the Code of 1882 was passed, the word "judgment" used in the letters patent cannot be relatable to or confined to the definition of "judgment" as contained in the Code of Civil Procedure which came into existence long after the letters patent were given. In this

connection, the Chief Justice observed [29 Cal LJ 225] as follows:

> "It has been held in numerous cases that as the letters patent were drafted long before even the earlier Code of 1882 was passed, the word 'judgment' used therein does not mean the judgment as defined in the existing Code of Civil Procedure. At the same time the word 'judgment' does not include every possible order, final, preliminary or interlocutory passed by a Judge of the High Court."

111. We find ourselves in complete agreement with the observations made by the Allahabad High Court on this aspect of the matter.

112. The definition of the word "judgment" in sub-section (9) of Section 2 of the Code of 1908 is linked with the definition of "decree" which is defined in sub-section (2) of Section 2 thus:

> " '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 within Section 47 or 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."

113. Thus, under the Code of Civil Procedure, a judgment consists of the reasons and grounds for a decree passed by a court. As a judgment constitutes the reasons for the decree it follows as a matter of course that the judgment must be a formal adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word "judgment" as used in clause 15 of the letters patent because the letters patent has advisedly not used the terms "order" or "decree" anywhere. The intention, therefore, of the givers of the letters patent was that the word "judgment" should receive a much wider and more liberal interpretation than the word "judgment" used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment; otherwise there will be no end to the number of orders which would be appealable under the letters patent. It seems to us that the word

"judgment" has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds:

> (1) *A final judgment.*— A judgment which decides all the questions or issues in controversy so far as the trial Judge is concerned and leaves nothing else to be decided. This would mean that by virtue of the judgment, the suit or action brought by the plaintiff is dismissed or decreed in part or in full. Such an order passed by the trial Judge indisputably and unquestionably is a judgment within the meaning of the letters patent and even amounts to a decree so that an appeal would lie from such a judgment to a Division Bench.
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> (2) *A preliminary judgment.*—This kind of a judgment may take two forms—(*a*) where the trial Judge by an order dismisses the suit without going into the merits of the suit but only on a preliminary objection raised by the defendant or the party opposing on the ground that the suit is not maintainable. Here also, as the suit is finally decided one way or the other, the order passed by the trial Judge would be a judgment finally deciding the cause so far as the Trial Judge is concerned and therefore appealable to the larger Bench. (*b*) Another shape which a preliminary judgment may take is that where the trial Judge passes an order after hearing the preliminary objections raised by the defendant relating to maintainability of

the suit, e.g., bar of jurisdiction, *res judicata*, a manifest defect in the suit, absence of notice under Section 80 and the like, and these objections are decided by the trial Judge against the defendant, the suit is not terminated but continues and has to be tried on merits but the order of the trial Judge rejecting the objections doubtless adversely affects a valuable right of the defendant who, if his objections are valid, is entitled to get the suit dismissed on preliminary grounds. Thus, such an order even though it keeps the suit alive, undoubtedly decides an important aspect of the trial which affects a vital right of the defendant and must, therefore, be construed to be a judgment so as to be appealable to a larger Bench.

(3) *Intermediary or interlocutory judgment.* — Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (*a*) to (*w*) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the letters patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather

than indirect or remote. For instance, where the trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the letters patent so as to be appealable to a larger Bench. Take the converse case in a similar suit where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the trial Judge would not amount to a judgment within the meaning of clause 15 of the letters patent but will be purely an interlocutory order. Similarly, suppose the trial Judge passes an order setting aside an ex parte decree against the defendant, which is not appealable under any of the clauses of Order 43 Rule 1 though an order rejecting an application to set aside the decree passed ex parte falls within Order

> 43 Rule 1 clause (*d*) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of letters patent. The fact, however, remains that the order setting aside the ex parte decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the trial Judge setting aside the ex parte decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is therefore, appealable to a larger Bench."

114. In the course of the trial, the trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the

party concerned in the appeal against the final judgment passed by the trial Judge.

115. Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

116. We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the letters patent. Suppose the trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases, although the order passed by the trial Judge is purely discretionary and interlocutory, it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore, though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the letters patent. This is what was held by this Court in *Shanti Kumar case* [(1974) 2 SCC 387 : AIR 1974 SC 1719 : (1975) 1 SCR 550] , as discussed above.

117. Let us take another instance of a similar order which may not amount to a judgment. Suppose, the trial Judge allows the plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but is not barred by limitation and does not work serious injustice to the defendant who would have ample opportunity to disprove the amended plea taken by plaintiff at the trial. In such cases, the order of the trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning of clause 15 of the letters patent.

118. The various instances given by us would constitute sufficient guidelines to determine whether or not an order passed by the trial Judge is a judgment within the meaning of the letters patent. We must however hasten to add that instances given by us are illustrative and not exhaustive. We have already referred to the various tests laid down by the Calcutta, Rangoon and Madras High Courts. So far as the Rangoon High Court is concerned we have already pointed out that the strict test that an order passed by the trial Judge would be a judgment only if it amounts to a decree under the Code of Civil Procedure, is legally erroneous and opposed to the very tenor and spirit of the language of the letters patent. We, therefore, do not approve of the test laid down by the Rangoon High Court and that decision therefore has to be confined only to the facts of that particular case because that being a case of transfer, it is manifest that no

question of any finality was involved in the order of transfer. We would like to adopt and approve of generally the tests laid down by Sir White, C.J., in *Tuljaram Row case* [ILR 35 Mad 1] (which seems to have been followed by most of the High Courts) minus the broader and the wider attributes adumbrated by Sir White, C.J., or more explicitly by Krishnaswamy Ayyar, J. as has been referred to above.

119. Apart from the tests laid down by Sir White, C.J., the following considerations must prevail with the court:

> "(1) That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is *ex facie* legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir White, C.J. as also by Sir Couch, C.J. as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind."

120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, of the Code of Civil Procedure.

(4) An order rescinding leave of the trial Judge granted by him under clause 12 of the letters patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under Section 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under Section 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the plaintiff."

121. Here, it may be noted that whereas an order deciding the nature of the court fees to be paid by the plaintiff would be a judgment but this order affects only the plaintiff or the Government and not the defendant. Thus, only the plaintiff or the Government as the case may be will have the right to file an appeal in the Division Bench and not the defendant because the question of payment of court fees is a matter between the Government and the plaintiff and the defendant has no locus in this regard.

122. We have by way of sample laid down various illustrative examples of an order which may amount to judgment but it is not possible to give such an exhaustive list as may cover all possible cases. Law with its dynamism, pragmatism and vastness is such a large ocean that it is well-nigh impossible for us to envisage or provide for every possible contingency or situation so as to evolve a device or frame an exhaustive formula or strategy to confine and incarcerate the same in a strait-jacket. We, however, hope and trust that by and large the controversy raging for about a century on the connotation of the term "judgment" would have now been settled and a few cases which may have been left out, would undoubtedly be decided by the court concerned in the light of the tests, observations and principles enunciated by us.

123. In the instant case, as the order of the trial Judge was one refusing appointment of a receiver and grant of an ad-interim injunction, it is undoubtedly a judgment within the meaning of the letters patent both because in view of our judgment.

> Order 43 Rule 1 applies to internal appeals in the High Court and apart from it such an order even on merits contains the quality of finality and would therefore be a judgment within the meaning of clause 15 of the letters patent. The consistent view taken by the Bombay High Court in the various cases noted above or other cases which may not have been noticed by us regarding the strict interpretation of clause 15 of the letters patent are hereby overruled and the Bombay High Court is directed to decide the question in future in the light of our decision.
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> **124.** We, therefore, hold that the order passed by the trial Judge in the instant case being a judgment within the meaning of clause 15 of the letters patent, the appeal before the Division Bench was maintainable and the Division Bench of the High Court was in error in dismissing the appeal without deciding it on merits. We have already directed the High Court to decide the appeal on merits by our formal order dated April 22, 1981."

17. It could thus be seen that though this Court has held that the term 'judgment' used in Letters Patent could not be given a narrower meaning as is given to the term 'judgment' used in CPC and that it should receive a much wider and more liberal interpretation, however, at the same time, each and every order passed by the trial judge could not be construed to be a

'judgment' inasmuch as there will be no end to the number of orders which would be appealable under the Letters Patent. It has been held that the word 'judgment' has undoubtedly a concept of finality in a broader and not in a narrower sense. It has been held that where an order vitally affects a valuable right of the defendants, it will undoubtedly be treated as a 'judgment' within the meaning of Letters Patent so as to be appealable to a larger Bench.

18. It has been held that most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (*a*) to (w) of Order XLIII Rule 1 CPC and would be 'judgments' within the meaning of the letters patent and, therefore, appealable. However, there may be interlocutory orders which are not covered by Order XLIII Rule 1 CPC but which also possess the characteristics and trappings of finality inasmuch as such orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. It has further been held that however, for

such an order to be a 'judgment', an adverse effect on the party concerned must be direct and immediate rather than indirect or remote. Various illustrations of interlocutory orders have been given by this Court in para (120), which could be held to be appealable. This Court held that though any discretion exercised or routine orders passed by the trial Judge in the course of the suit may cause some inconvenience or, to some extent, prejudice to one party or the other, they cannot be treated as a 'judgment' unless they contain the traits and trappings of finality. This Court has expressed in para (122) that though it had, by way of sample, laid down various illustrative examples of an order which may amount to a judgment, it would not be possible to give such an exhaustive list as may cover all possible areas. This Court, in the facts of the said case, held that an order of the Single Judge refusing appointment of a receiver and grant of an ad-interim injunction was undoubtedly a 'judgment' within the meaning of Letters Patent, both because Order XLIII Rule 1 CPC applies to internal

appeals in the High Court and that such an order even on merits contains the quality of finality and would therefore be a 'judgment' within the meaning of Clause 15 of the Letters Patent.

19. Justice A.N. Sen, while holding that the order in question was appealable under Section 104(1) read with Order XLIII CPC, did not find it necessary to go into the question as to whether such an order would be appealable under Clause 15 of the Letters Patent. It will be apposite to refer to the following observations of the learned Judge:

> "**151.** .....In my opinion, an exhaustive or a comprehensive definition of 'judgment' as contemplated in Clause 15 of the Letters Patent cannot be properly given and it will be wise to remember that in the Letters Patent itself, there is no definition of the word 'judgment'. The expression has necessarily to be construed and interpreted in each particular case. It is, however, safe to say that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of court's jurisdiction or the question of limitation, such an order will normally constitute 'judgment' within the meaning of Clause 15 of the Letters Patent....."

20. Justice Sen reiterated that it was safe to say that if any order has the effect of finally determining any controversy forming the subject-matter of the suit itself or any part thereof or the same affects the question of court's jurisdiction or the question of limitation, such an order will normally constitute 'judgment' within the meaning of Clause 15 of Letters Patent. He however observed that the expression has necessarily to be construed and interpreted in each particular case.

21. It could thus be seen that both the judgments of Justice S. Murtaza Fazal Ali as well as Justice A.N. Sen have a common thread that, as to whether an order impugned would be a 'judgment' within the scope of Clause 15 of Letters Patent, would depend on facts and circumstances of each case. However, for such an order to be construed as a 'judgment', it must have the traits and trappings of finality. To come within the ambit of 'judgment', such an order must affect vital and valuable rights of the parties, which works serious injustice to

the party concerned. Each and every order passed by the Court during the course of the trial, though may cause some inconvenience to one of the parties or, to some extent, some prejudice to one of the parties, cannot be treated as a 'judgment'. If such is permitted, the floodgate of appeals would be open against the order of Single Judge.

22. In the light of this observation, we will have to consider as to whether the order passed by the learned Single Judge dated 2nd April 2019, could be construed as a 'judgment' within the meaning of Clause 15 of Letters Patent.

23. What the learned Single Judge has done by the said order, was to grant two weeks' time to the appellants-defendants to file affidavit-in-opposition and postpone the issue of grant of ad-interim injunction by three weeks. No doubt, that the learned Single Judge has at one place observed that prima facie, he was of the view that 'SHYAM' being a part of the business name of the appellants-defendants, no injunction should be passed to restrain the appellants-defendants from

using the said word 'SHYAM' on their packaging, but in the same order, he has clarified that all the observations he has made in the said order were prima facie for the purpose of passing an order at the ad-interim stage and the same would have no relevance at the time of considering and deciding the said application after exchange of affidavits.

24. It could thus be seen that the order in fact was postponement of the question as to whether the respondent-plaintiff was entitled to grant of an ad-interim injunction or not, and that too, by merely three weeks. The order was only giving an opportunity to the appellants-defendants to file their affidavit-in-opposition within a period of two weeks. The order clarified that no prayer for extension of time shall be entertained. The learned Single Judge therefore postponed the issue with regard to consideration of the prayer of the respondent-plaintiff for grant of ad-interim injunction by a period of mere three weeks and that too only in order to afford an opportunity to the appellants-defendants to file their

affidavit-in-opposition. While doing the same, the respondent-plaintiff's interest was also protected, inasmuch as the appellants-defendants were directed to maintain weekly accounts of sale of their products covered by Class 6, which were sold under the mark 'SHYAM'.

25. It is thus clear that there was no adjudication with regard to the rights of the respondent-plaintiff to get an ad-interim injunction during the pendency of the suit. Though by postponement of the issue with regard to grant of ad-interim injunction, the order might have caused some inconvenience and may be, to some extent, prejudice to the respondent-plaintiff; the same could not be treated as a 'judgment' inasmuch as there was no conclusive finding as to whether the respondent-plaintiff was entitled for grant of ad-interim injunction or not. As such, the order passed by the learned Single Judge did not contain the traits and trappings of finality. If it is held otherwise, this will open a floodgate of appeals for parties who may even challenge the order of adjournment or

grant of time to the other side to file affidavit-in-reply. We are therefore of the considered view that the order dated 2nd April 2019 cannot be construed to be a 'judgment' within the meaning of Clause 15 of Letters Patent and as such, the appeal to the Division Bench of the High Court was not tenable.

26. We clarify that as held in ***Shah Babulal Khimji*** (supra), we are holding so, taking into consideration the facts and circumstances as they appear in the present matter.

27. With this, we could have very well allowed the present appeal by setting aside the impugned judgment and order of the Division Bench of the High Court. However, since we find that the approach of the Division Bench of the High Court was totally contrary to the various well-settled principles of law, we are required to consider the correctness of various findings and observations of the Division Bench of the High Court in the impugned judgment and order.

28. The learned Single Judge passed an order on 2nd April 2019. It appears that the appeal to the Division Bench of the

High Court was filed immediately thereafter in the month of April, though the exact date of filing of appeal is not known. The judgment and order impugned herein was passed after a gap of about 8-9 months from the date of the order passed by the learned Single Judge. The perusal of the judgment and order impugned herein would clearly reveal that the counsel for the appellants-defendants had specifically submitted that the appeal was against an ad-interim order and therefore, the appellate court should not interfere by substituting its views but should instead direct a speedy hearing of the interim application of the respondent-plaintiff. The Division Bench of the High Court after recording the said submission, observed thus:

> "Before entering into a discussion with regard to the merits of this case I say that all the facts and papers which were necessary for deciding the prima facie case of the parties were before us. On these facts and evidence we were in a position to assess their respective prima facie case and the balance of convenience.
>
> In those circumstances we propose to dispose of the interlocutory application ourselves instead of

> entering a prima facie finding and relegating it to the court below for its disposal. That would be unnecessary prolongation of the litigation and utter wastage of time."

29. It is difficult to appreciate the anxiety on the part of the Division Bench of the High Court to itself dispose of the interlocutory application instead of relegating it to the court below for its disposal. When the Division Bench of the High Court itself took 8-9 months to decide the appeal, it is difficult to understand as to what the learned Judges of the Division Bench of the High Court meant by "unnecessary prolongation of the litigation and utter wastage of time". If the learned Judges of the Division Bench were so much concerned with the prolongation of litigation, they could have very well requested the learned Single Judge to decide the injunction application within a stipulated period. Instead of waiting for a period of 8-9 months, this could have been done by them at the very first instance when the appeal was listed. The hierarchy of the trial court and the appellate court exists so that the trial court

exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. If the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts. As observed by this Court in ***Monsanto Technology LLC*** (supra), the appellate court cannot usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

30. Though there are various observations made by the Division Bench of the High Court, which in our view, are totally unwarranted, we refrain ourselves to refer to them as any comment thereon would unnecessarily prejudice the rights of either of the parties. We will only limit ourselves to the

minimum possible observations of the Division Bench of the High Court.

31. Though the Division Bench of the High Court, referring to the judgment of this Court in the case of ***Wander Ltd.*** (supra), observes that the appellate court will not substitute its opinion with that of the trial court in an interim application unless there is a perversity in the order, it fails to discuss as to how the view taken by the trial judge was either perverse or impossible. At one place, the Division Bench of the High Court observes that:

> "*Now, the question is whether the learned single judge exercised his discretion correctly and whether this court should interfere with that exercise of discretion.*"

and in the same breath observes that:

> "*Therefore, we have considered the case on the basis of the petition as well as the additional evidence before us. In our opinion, this court is not called upon only to evaluate whether the exercise of discretion by the learned trial court was right or wrong.*"

Then immediately thereafter, the Division Bench of the High Court observes that:

> "*This court is duty bound to pass a suitable interim order, pending trial of the suit.*"

32. We ask a question to ourselves that, in an appeal against the order of a Single Judge, if the Division Bench of the High Court is not required to evaluate the question as to whether the discretion exercised by the trial court was right or wrong, what else is it required to do. We are unable to trace the source of the duty of the appellate court which makes it bound to pass a suitable interim order pending the trial of the suit.

33. The Division Bench of the High Court further observes that for doing so, it has to put itself in a position as if it was moved to pass an interim order in the suit. At the cost of repetition, we reiterate that if the approach of the Division Bench of the High Court is to be upheld, then there would be no necessity to have the trial courts at all. Thereafter, the Division Bench of the High Court observes that the case was

different from ***Wander Ltd.*** (supra). The Division Bench of the High Court stops at that. It does not even take the trouble to observe as to how the scope of the appeal before it was different from the scope as defined by this Court in ***Wander Ltd.*** (supra). In a line thereafter, the Division Bench of the High Court observes that prima facie case on facts theoretically is in favour of the appellant therein (plaintiff) and thereafter, passes various directions including the injunction. Though, in fact, it allows the appeal in entirety by allowing an application under Order XXXIX Rules 1 and 2 CPC *pendente lite* the suit, it graciously observes in the ultimate para that it was only modifying the order dated 2nd April 2019 passed by the learned Single Judge.

34. The learned Judges of the Division Bench of the High Court have taken pains to make a mention of the judgment of this Court in the case of ***Wander Ltd.*** (supra). This judgment has been guiding the appellate courts in the country for decades while exercising their appellate jurisdiction considering

the correctness of the discretion and jurisdiction exercised by the trial courts for grant or refusal of interlocutory injunctions. In the said case, the learned Single Judge had refused an order of temporary injunction in favour of the plaintiff who was claiming to be a registered proprietor of the registered trade mark. The Division Bench of the High Court had reversed the order passed by the learned Single Judge and granted interim injunction. Reversing the order of the Division Bench of the High Court and maintaining the order of the learned Single Judge, this Court observed thus:

> "**14.** The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally

not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd.* v. *Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

> "... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co.* v. *Jhanaton* [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

35. Though the learned Judges of the Division Bench of the High Court have on more than one occasion referred to the judgment of this Court in ***Wander Ltd.*** (supra), they have not even, for namesake, observed as to how the discretion exercised by the learned Single Judge was exercised arbitrarily,

capriciously or perversely. In our view, having waited for 8-9 months after the learned Single Judge had passed the order, all that ought to have been done by the learned Judges of the Division Bench of the High Court was to request the learned Single Judge to decide the application for ad-interim injunction, which in fact, the learned Single Judge had scheduled to do after three weeks from 2nd April 2019. In our view, it was not even necessary for the Division Bench of the High Court to have waited till 24th December 2019 and taken the pains of deciding the application at first instance. It could have very well, in the month of April, 2019 itself, done the exercise of requesting the learned Single Judge to decide the application as scheduled.

36. In any event, though the Division Bench of the High Court observes that for deciding the question with regard to grant of interim injunction, it has to put itself in a position as if it was moved to pass an interim order in the suit, it even fails to take into consideration the principles which a court is required to take into consideration while deciding such an application. It is

a settled principle of law that while considering the question of grant of interim injunction, the courts are required to consider the three tests of prima facie case, balance of convenience and irreparable injury. Besides a stray observation that the respondent-plaintiff has made out a prima facie case, there is no discussion as to how a prima facie case was made out by the respondent-plaintiff. In any case, insofar as the tests of balance of convenience and irreparable injury are concerned, there is not even a mention with regard to these in the impugned judgment and order of the Division Bench of the High Court. In our view, the approach of the Division Bench of the High Court was totally unwarranted and uncalled for. We refrain ourselves from using any stronger words.

37. We find that it is high time that this Court should take note of frivolous appeals being filed against unappealable orders wasting precious judicial time. As it is, the courts in India are already over-burdened with huge pendency. Such unwarranted proceedings at the behest of the parties who can

afford to bear the expenses of such litigations, must be discouraged. We therefore find that the present appeal deserves to be allowed with token costs. The respondent-plaintiff shall pay a token cost of Rs.5 lakhs to the Supreme Court Middle Income Group Legal Aid Society (MIG).

38. In the result, the appeal is allowed. The impugned judgment and order dated 24th December 2019 is quashed and set aside. The learned Single Judge is requested to decide the application filed by the respondent-plaintiff under Order XXXIX Rules 1 and 2 CPC as expeditiously as possible and in any case, within a period of six weeks from the date of this judgment. Till further orders are passed by the learned Single Judge, the order passed by the learned Single Judge dated 2nd April 2019 would continue to operate.

39. We clarify that we have not touched upon the merits of the matter and none of the observations either by the learned Single Judge or the Division Bench of the High Court or by us, would in any manner weigh with the learned Single Judge while

deciding the application for injunction filed by the respondent-plaintiff.

40. Pending application(s), if any, shall stand disposed of in the above terms.

.....J.
[L. NAGESWARA RAO]

.....J.
[B.R. GAVAI]

NEW DELHI;
MARCH 14, 2022.