For the appellant in the connected Appeal No. 44 it was urged by his learned counsel that he was only a *munim* of a firm and not a partner or a proprietor as the other appellants and that it could not be stated of him that he was interested in giving or attempting to give any bribe for hushing up the case. There is, however, the clear and definite evidence of Labhu Ram that Gian Chand came along with the appellants to him when the talk about the bribe took place. He says that on the morning of the 29th December, 1951, the three accused who were staying at the Coronation Hotel, Delhi, told him that they had amongst themselves collected Rs. 5,000 to be paid to Madan Lal and that in the house of Madan Lal all the three accused one by one made request to Madan Lal to hush up the potato case pending against them. This is corroborated by Madan Lal who states that all the three accused said that the money had been subscribed by them jointly and requested him to accept the same and get the case withdrawn. The case of Gian Chand does not stand on any differest footing from that of the other appellants.

The convictions and sentences are confirmed and the appeals will stand rejected.

CIVIL MISCELLANEOUS.

Before Falshaw and Kapur JJ.

THE INDIAN TRADE AND GENERAL INSURANCE CO., LTD.,—*Petitioner*

versus

M/S. RAJ MAL-PAHAR CHAND AND ANOTHER,—*Respondents.*

Civil Miscellaneous Case No. 772/C of 1954.

1956

March 13th

Constitution of India, Article 133—Code of Civil Procedure, Section 110—Appeal to Supreme Court—Judgment appealed against passed after the coming into force of the Constitution—Whether value of the subject in appeal to be determined under Article 133 of the Constitution or section

110 of the Code of Civil Procedure, as it existed before the Constitution—"Question of Private importance" in Article 133, meaning of.

Held, that in regard to a judgment which was passed after the Constitution came into force, the appeal from that judgment to the Supreme Court is governed by Article 133(1)(c) of Constitution of India and not by section 110 of the Code of Civil Procedure, as it existed before the Constitution. Therefore, the value for purposes of jurisdiction has to be Rs. 20,000 as provided by the Constitution and not Rs. 10,000 as provided by the old Civil Procedure Code.

Held further, that by a "question being of private importance" is meant private importance to both parties to the litigation and not only to one of them.

Nathoo Lal v. *Durga Prasad* (1), *Veeranna* v. *Venkanna* (2), *Probirendra Mohan* v. *Berhampore Bank, Ltd.* (3), *State of Seraikella and others* v. *Union of India and another* (4), *Chanda Cement Company* v. *Town of East Montreal* (5), *In re. Vasudeva Samiar* (6), *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* (7), *Banarsi Parshad* v. *Kashi Krishana Narain* (8), *B. Raja Rajeswara Sehupathi* v. *Tiruneelakantam Servai and another* (9), relied upon, *Dajisaheb* v. *Shankarrao Vithalrao* (10), not followed.

Application under Order 45, Rules 2, 3 and 4 read with Sections 109 and 110 of the Civil Procedure Code, and Article 133 of the Constitution of India for a certificate of fitness to be granted for appeal to the Supreme Court against the Judgment of Hon'ble Mr. Justice Falshaw, and Hon'ble Mr. Justice Kapur, dated 27th September, 1954, in Re. R.S.A. 465 of 1951.

S. L. PURI, for Petitioner.

K. L. GOSAIN and N. L. SALOOJA, for Respondents.

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(1) A.I.R. 1954 S.C. 355
(2) I.L.R. 1953 Mad. 1079
(3) A.I.R. 1954 Cal. 289
(4) 1951 S.C.R. 474
(5) (1922) I.A.C. 249
(6) (1928) I.L.R. 52 Mad. 36
(7) (1940) F.C.R. 84
(8) 28 I.A. 11
(9) A.I.R. 1923 Mad. 232
(10) A.I.R. 1952 Bom. 303

ORDER.

KAPUR, J. These are four petitions (Civil Miscellaneous Applications Nos. 772/C, 773/C, 774/C and 775/C of 1954) for leave to appeal to the Supreme Court against four decrees of this Court reversing the decrees of the Courts below in the four cases. Kapur, J.

The facts of the case are given in the judgment in Civil Regular Second Appeal No. 465 of 1951. The plaintiff brought eleven suits against the Railway claiming various sums of money as compensation for non-delivery of goods. All the suits were dismissed by the trial Court and those decrees were affirmed by the District Judge, Appeals in four cases were brought to this Court in which the decrees passed by the Courts below were reversed and the Insurance Company which was a party defendant has applied for leave to the Supreme Court consolidating the pecuniary value of the suits for purposes of jurisdiction.

An objection is raised that leave cannot be given as a matter of course because even if the appeals are allowed to be consolidated the value does not come to Rs. 20,000 which is the allowable limit. It is not Rs. 10,000 any longer. Reliance is placed on a judgment of the Supreme Court in *Nathoo Lal* v. *Durga Prasad* (1). There on review a decree was finally passed in April, 1950 when the Jaipur High Court had been abolished and was substituted by the Rajasthan High Court. It was held that the provisions of Article 133 apply to decrees passed after the passing of the Constitution of India and it is the requirements of that Article which have to be fulfilled

(1) A.I.R. 1954 S.C. 355

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and the Code of Civil Procedure of Jaipur could not determine the jurisdiction of the Supreme Court and had no relevancy to the maintainability of the appeal and as the requirements of Article 133 had been fulfilled the appeal was competent. The Madras High Court in *Veeranna* v. *Venkanna,* (1), have held that if a judgment is delivered or decree passed after the commencement of the Constitution, then the provisions of Article 133 (1) are applicable and that Article 135 applies only where Articles 133 and 134 do not apply. Same view was taken by the Calcutta High Court in *Prabirendra Mohan* v. *Berhampore Bank Ltd.* (3), where it was held that in judgments passed after the coming into operation of the Constitution the valuation limit is Rs. 20,000 and not Rs. 10,000. But counsel for the petitioner relies on a judgment of the Bombay High Court in *Dajisaheb v. Shankarrao Vithalrao,* (3), in which it was held that a right of appeal under section 110 of the Civil Procedure Code continues in respect of all suits filed prior to the coming into force of the Constitution and there is nothing in Article 133 (1) of the Constitution by which the litigant is deprived of that right and that position is made clear by section 110 of the Civil Procedure Code where Rs. 20,000 is substituted in place of Rs. 10,000. The learned Judges also relied upon Article 135 of the Constitution which confers upon the Supreme Court a different and wider jurisdiction than that under Article 133. Right to appeal, therefore, is not lost because of the abolition of the Privy Council or of the Federal Court or because the matter is not covered by Article 133 (1).

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(1) I.L.R. 1953 Mad. 1079
(2) A.I.R. 1954 Cal. 289
(3) A.I.R. 1952 Bom. 303

Article 133 (1) (a) provides for leave to appeal to the Supreme Court in the following words :—

"133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law" ;

Mr. Shambhu Lal Puri has contended that parties to a suit have a vested right to appeal to the Supreme Court in the same manner as they had in regard to their right of appeal to the Privy Council and as after the abolition of the Privy Council there was a vested right to appeal to the Federal Court and the same right continues in regard to appeals to the Supreme Court also and he submits that because before the Constitution came into force an appeal lay to the Federal Court he can appeal to the Supreme Court irrespective of the change in the limited valuation. Now, in my opinion, that is an argument which is not sustainable after the judgment of the Supreme Court themselves in *Nathoo Lal* v. *Durga Prasad*, (1), because they have pointed out that the right of appeal to the Court is not to be determined by any Code of Civil Procedure but an appeal lies when the requirements of Article 133 (1) (a) are

(1) A.I.R. 1954 S.C. 355

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complied with. This only means that where the value is Rs. 20,000 or more an appeal would lie and not where the value is less than that amount. In the judgment of Patanjali Sastri, J. in *State of Seraikella and others* v. *Union of India and another*, (1), it is said—

> "The Federal Court, in which the suits were pending, and which had exclusive jurisdiction to dealt with them was abolished and a new Court, the Supreme Court of India, was created with original jurisdiction strictly limited to disputes relating to legal rights between States recognised as such under the Constitution."

Therefore, the Supreme Court is a new Court although it has inherited some of the jurisdiction of the Federal Court. But in regard to appeals against decrees passed by Courts the Article which is applicable is Article 133 (1) (a) and it cannot be said that in this particular case or in other cases where the suits were filed before the Constitution but were decided after, the limit of pecuniary jurisdiction would continue to be Rs. 10,000 although the Article itself says that it is Rs. 20,000. In my opinion, and I say so with due respect that the view taken by Madras and Calcutta High Courts in the cases which I have mentioned seems to be in keeping with the view taken by the Supreme Court in *State of Seraikella and others* v. *Union of India and another*, (1), and the latest pronouncement of their Lordships seems to confirm the view taken by Madras and Calcutta and I would, therefore, hold that the value for purposes of jurisdiction has to be Rs. 20,000 as provided by the Constitution and not Rs. 10,000 as provided by the old Civil Procedure Code.

(1) 1951 S.C. 474 at p. 497

It is then submitted that Article 135 would apply because the provisions of Article 133 do not, but if a specific Article governs the pecuniary limits of an appeal then Article 135 will not be applicable, and I respectfully agree with the Madras view (I.L.R. 1953 Mad. 1079) that the institution of the suit carries with it the preservation of the vested right of parties in regard to the appeal but with the exception that there is no right of appeal where the right is expressly or impliedly taken away or the Court to which the appeal was to be taken is abolished without there being a provision for appeals which lay to the abolished Court *Canada Cement Company* v. *Town of East Montreal*, (1), was a case of this kind. A summary of the judgment of that Court has been given by Courts-Trotter, C. J., in *Vacudeva Samiar, In re.* (2), as follows :—

> "In that case what was taken away was not the right of appeal but the very Court to which the appeal lay, namely, the Superior Court of Montreal sitting in review. By 10 George V. Chapter 79 (Quebec), the right of appeal was transferred from the abolished Court to the Appellate Side of the Court of King's Bench in Quebec, but no provision was made for the transference of appeals which would have lain to the abolished Court to the newly constituted Appellate Court. In these circumstances their Lordships of the Privy Council held that an appeal from the Circuit Court to the Court of King's Bench did not lie."

When the present suits were filed the final Court of appeal would have been the Federal

(1) (1922) I.A.C. 249
(2) (1928) I.L.R. 52 Mad 36 (F.B.)

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Court and when this Court was abolished on coming into force of the Constitution the prceedings pending in the Federal Court in regard to appeals stood removed to the Supreme Court but there was no provision made as regards proceedings by way of appeal or otherwise not pending in the Federal Court at the commencement of the Constitution. Nor can Article 135 be taken to supply the Lacuna to mean that the words "any matter to which the provisions of Article 133 or Article 134 do not apply" can be construed to include a case which did not fulfil the requirements, pecuniary or otherwise, of Article 133.

Article 135 when quoted is as under :—

> "Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commcement of this Constitution under any existing law."

The decree in the present case was passed after the Constitution and as was pointed out by Rajamannar, C. J., in the Madras case at page 1096—

> "There is another aspect of the question to which I shall briefly refer. It was held in *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* (1), that unless an appeal to the Federal Court had been admitted the proceeding must be deemed to be pending before the High

(1) (1940) F.C.R. 84

Court in respect of which the Federal Court could not exercise jurisdiction. If that be so, how can it be said that a case in which the decrees was passed after the commencement of the Constitution is a matter in relation to which jurisdiction and powers were exercisable by the Federal Court immediately before the commencement of the Constitution ? In my opinion, it is at least necessary that the judgment should have been delivered or the decree or final order passed before the Constitution to say that the Federal Court had any exercisable jurisdiction and powers in relation to a case. Whether it is also necessary that an application for leave should have been filed or granted before that date it is unnecessary to discuss now, as in the present case neither event has happened before the Contitution."

In my view, therefore, it must be held in regard to a judgment which is passed after the Constitution came into force the appeal is to be governed by Article 133 (1) (a) and not by section 110 of the Code of Civil Procedure as it existed before the Constitution.

The next submission of counsel was that leave should be given because it is a fit case for appeal under clause (c) of Article 133 (1), i.e., it is a case fit for appeal to the Supreme Court. I cannot find anything in the present case which would bring it within this clause. The petitioner says that his grounds of appeal in paragraphs 6, 7, 8 and 9 bring it within the phrase "fit for appeal to the Supreme Court" but I am unable to agree because it was not his plea in the Courts below that

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the suit was not barred by time and the points which he wishes to raise now do not fall within the rule laid down by Lord Hobhouse in *Banarsi Parshad* v. *Kashi Krishna Narain* (1), as interpreted by the Madras High Court in *B. Raja Rajeswara Sethupathi* v. *Tiruneelakantam Servai and another* (2), where it was held that by a question being of private importance is meant private importance to both parties to the litigation and not only to one of them. Therefore, according to the findings of this Court the case is not one which falls within *Banarsi Parshad's case* (1), and it cannot be said that the case is a fit one for appeal to the Supreme Court. I would, therefore, dismiss these petitions with costs.

Falshaw, J.

FALSHAW, J. I agree.

CIVIL MISCELLANEOUS.

Before Falshaw and Kapur, JJ.

SARUP LAL,—*Appellant-Petitioner.*

versus

KAUSHALYA DEVI AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 805/C of 1955.

1956

March 14th

Code of Civil Procedure (V of 1908)—Order 45, Rule 13—Scope of—Powers of High Court under—Stay of operation of the order appealed against, whether can be granted —Successful party, whether can be restricted from exercising his rights under the final orders of the Court.

On 21st July, 1954, S. L. granted leave to appeal to Supreme Court. He applied under Order 45, Rule 13, Civil Procedure Code, for stay of the operation of the order of the High Court appealed against. Stay was granted as prayed. K. D. moved the High Court for vacation of the stay.

(1) 28 I.A. 11
(2) A.I.R. 1923 Mad. 232