tributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment."

On the basis of this it was contended that at the time when the orders were passed, there was no power in this Court to interfere with them and they had become final. The reference made to the Tribunal under section 5 (1) was shielded against any scrutiny or interference of the Civil Courts at least by section 5 (3) of the Act, and even if that shield had been removed by Article 226 with regard to subsequent orders this matter had become final and, therefore, this Court has no jurisdiction to interfere. I am inclined to agree with this submission, but on the material now before me I would not like to express any final opinion.

In the result, I am of the opinion that the rule issued in these various petitions should be discharged. The respondents will have their costs in all these petitions which I assess at Rs. 250 for each petition.

KHOSLA, J.—I agree.

Khosla J.

CIVIL MISCELLANEOUS

Before Harnam Singh and Kapur, JJ.

JAGAT RAM,—*Petitioner,*

versus

GAGNA AND OTHERS,—*Respondents.*

1950

Nov. 2nd

Civil Miscellaneous No. 80|C of 1950.

Constitution of India—Article 133—Order refusing leave to appeal in forma pauperis—*Whether a "Judgment, decree or final Order" within the meaning of the Article—Civil Procedure (Act V of 1908)—Order XLIV, rule I, Proviso—Requirements thereof—Whether fulfilled.*

Jagat Ram, *v.* Gagna and others

Held that an order refusing an application for leave to appeal *in forma pauperis* is not a "decree, judgment or final order" of the High Court within the meaning of Article 133 of the Constitution.

Judgment means a decision of the Court which affects the merits of the question between the parties by determining some right or liability and does not include a mere formal order, or an order regulating the procedure in a suit or an appeal. The order in the present case refusing leave to appeal is merely an interlocutory order prescribing the procedure under which the plaintiffs' appeal should be conducted and is not an order finally disposing of the rights of the parties or some final adjudication upon the subject matter of the suit.

Ram Prasad Sha v. Mst. *Falpati Kuer* (1), referred to.

Held further that the order in the present case refusing the application to appeal *in forma pauperis* was made in accordance with the requirements of the proviso to rule 1 of Order XLIV of the Code of Civil Procedure and no substantial question of law arose in the case nor was the case a fit one for appeal to the Supreme Court.

Case-law referred to.

Petition under sections 132 and 133 of the Constitution of India and section 110 and section 109 Civil Procedure Code, praying that leave to appeal to Supreme Court from the judgment of the High Court, dated 16th March 1950, in Civil Miscellaneous No. 62 of 1949, 'Jagat Ram v. Gagna etc., be given and the required certificate granted.

....(Original Suit No. 27 of 1949 decided by Shri G. K. Bhatnagar, Sub-Judge, 1st Class, Dharamsala, on the 18th January 1949.)

M. C. SUD, for Petitioner.

D. K. MAHAJAN, for Respondent.

ORDER

Harnam Singh J.

HARNAM SINGH, J. This is an application for leave to appeal to the Supreme Court of India from the

(1). I.L.R. (1927) 6 Pat. 67.

decision in Civil Miscellaneous No. 62 of 1949 whereby this Court refused leave to the plaintiff-applicant to appeal *in forma pauperis*.

Mr Daya Kishen Mahajan urges a preliminary objection that an order rejecting an application to appeal *in forma pauperis* does not come within Article 133 of the Constitution of India. The argument raised is that such an order is not a judgment, decree or final order of the High Court within Article 133. Clearly, the appeal sought to be preferred to the Supreme Court of India is not an appeal from any decree of this Court.

The question that then arises for decision is whether the order passed in Civil Miscellaneous No. 62 of 1949 on the 16th of March 1950, is a *judgment* or *final order* or not. Plainly it is not.

Now, the word "judgment" is not defined in the Constitution of India or in the General Clauses Act, 1897. In Wharton's Law Lexicon the word "judgment" is defined as a judicial determination putting an end to the action by an award or redress to one party, or discharge of the other, as the case may be. Indeed, there is abundant authority for the view that "judgment" means a decision of the Court which affects the merits of the question between the parties by determining some right or liability and does not include a mere formal order, or an order regulating the procedure in a suit or an appeal. The order from which it is sought to appeal to the Supreme Court of India does in no way determine the rights of Jagat Ram as an appellant with regard to the subject-matter of appeal. The order is merely an interlocutory order prescribing the procedure under which the plaintiff's appeal should be conducted. It was open to the appellant to pay the Court-fee if he was able and willing to pay the Court-fee and to proceed with the appeal in the ordinary course. Clearly, the order sought to be appealed against is not a judgment within Article 133 of the Constitution of India.

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The question that then arises for determination is whether the order from which it is sought to appeal to the Supreme Court of India is a "final order" within Article 133 of the Constitution of India.

On this point the case is concluded against the applicant by authority. *Ram Prasad Sha* v. *Mussammat Falpati Kuer* (1), *B. R. Vertannes* v. *R. G. B. Lawson and others* (2), *Murlidhar* v. *Faqir Bakhsh and others* (3), and *Aisha Bee Bee* v. *Noor Mohammad and others* (4) may be seen.

A similar point came up before the Judicial Committee of the Privy Council in *Ramchand Manjimal* v. *Goverdhandas Vishandas Ratanchand* (5). In that case Lord Cave said :—

> "The question as to what is a final order was considered by the Court of Appeal in the cases of *Salaman* v. *Warner* (6), *Bozson* v. *Altrichem Urban District Council* (7) and *Isaacs* v. *Salbstein* (8). The effect of those and other judgments is that *an order is final if it finally disposes of the rights of the parties.*"

Mr. Mehr Chand Sud, learned counsel for the applicant, however, urges that the order from which it is sought to appeal to the Supreme Court of India does determine the right of Jagat Ram to appeal *in forma pauperis*. This point was considered in *Ram Prasad Sha* v. *Mst. Falpati Kuer* (1). In that case Dawson Miller, C. J. (Foster, J., concurring) said :—

> "The only argument addressed to us is that the decision does determine the right of the party to appeal *in forma pauperis* and therefore it is a final adjudication of that right.

(1) I.L.R. (1927) 6 Pat. 67.
(2) (1935) 157 I. C. 39.
(3) 1925 AI.R. Oudh 549.
(4) I.L.R. (1932) 10 Rang. 504.
(5) (1920) 47 I.A. 124.
(6) (1891) I . Q. B. 734.
(7) (1903) K. B. 547 (8).
(8) (1916) 2K. B. 139.

> That however is not the class of right with regard to which finality must exist in order to make it a final decree or order. Every order in one sense " finally determines some right of the parties, whether it be a right to appeal or whether it be a right to have an extension of time or whether it be any other kind of right, but before one can give a final decree or order there must be some final *adjudication upon the subject-matter of the suit,* that is to say the rights claimed by one party in the suit itself and denied by the other. "

That being the situation of matters, the order passed by this Court in Civil Miscellaneous No. 62 of 1949 on the 16th of March, 1950, is not a " judgment " or a " *final order* " within Article 133 of the Constitution of India.

Apart from the objection that the order in question is not a judgment, decree or *final order* within Article 133 of the Constitution of India I have no doubt that the Court acted strictly in accordance with the provisions of Order XLIV, rule 1 of the Code of Civil Procedure and merely did what it was bound by the proviso to that rule to do. The proviso to rule 1 of Order XLIV required the Court to reject the application unless, upon a perusal thereof, and of the judgment and decree appealed from, it sees reasons to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust.

In rejecting the application for leave to appeal *in forma pauperis* this Court found that inasmuch as the decision of the trial Court proceeded upon questions of fact, namely, that the money in suit was not the property of *Mussammat* Beli, and that she was not competment to make the will with respect to the money in dispute, the case did not satisfy the requirements of rule I of Order XLIV of the Code. No substantial question of law arises in the appeal, nor is the case a fit case for appeal to the Supreme Court.

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Harnam Singh J.

Finding as I do that the order passed by this Court on the 16th of March 1950, is not a judgment, decree or final order within Article 133 of the Constitution of India and that the order rejecting the application to appeal *in forma pauperis* was made in accordance with the requirements of the proviso to rule 1 of Order XLIV, I would reject the application for leave to appeal to the Supreme Court of India.

Considering, however, that the applicant sued *in forma pauperis* and his contention all along has been that he has no means to pay the Court-fee we leave the parties to bear their own costs in these proceedings.

Kapur J.

KAPUR, J. I am of the same opinion and would like to add that the use of the word "judgment" in Article 133 (1) (*a*) must mean something different from the words "decree and final order". In the Civil Procedure Code in section 2 (9) a judgment "means the statement given by the Judge of the grounds of the decree or order". If such a wide meaning were to be given to the word "judgment" then the words "decree or final order" would be unnecessary. It was observed by Harries, C. J., in *Rejkumar Chandra Singh and others* v. *The Midanapore Zamindary Co., Ltd.*, (1) :—

> "If appeals lay from all judgments then the words 'decree or final order' were unnecessary and it appears to me that if this Court holds that the order sought to be appealed from is not a final order, then no appeal can lie because there was a judgment upon which the order sought to be appealed from was drawn up."

In my opinion, if too wide a meaning were to be given to the word "judgment" there would be a right of appeal from an order which is not final and from a formal adjudication which could not be described as

(1) (1950) 54 C. W. N. 874 (877).

a decree which would mean nullifying the two words "decree" or "final order". The meaning of this word has been defined in several cases to mean a decision which affects the merits of the question between the parties by determining some right or liability. See *Ibrahim* v. *Fuckhrnnissa Begum* (1). *The Justices of the Peace for the Town of Calcutta* v. *The Oriental Gas Company Limited* (2), *Ruldu Singh* v. *Sawan Singh* (3), and *T. V. Tuljaram Row* v. *M. K. R. V. Alagappa Chhettiar* (4).

In the last case *T. V. Tuljaram Row* v. *M. K. R. V. Alagappa Chhettiar* (4) is was held that "an adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not * * * * * * judgment".

I respectfully agree with the view taken by Harries, C. J., in the case referred to above (5) and am of the opinion that the wide meaning which the petitioner seeks to give this word is not justified.

I, therefore, agree that this petition should be dismissed but without costs.

Petition dismissed.

(1) I.L.R. (1878) 4 Cal. 531.
(2) (1872) W. R. 364.
(3) I.L.R. (1922) 3 Lah. 188.
(4) I.L.R. (1912) 35 Mad. 1.
(5) (1950) 54 C. W. N. 874 (877).

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