SIRIWARDENA
v.
AIR CEYLON LTD.

COURT OF APPEAL
ATUKORALE, J., AND L.H. DE ALWIS, J.
C.A.(LA) 67/82.
D.C. COLOMBO 3336/Z.
JUNE 15, 1982

Civil Procedure Code, sections, 189 and 754(1) – Amendment of judgment and decree by judge – Does final order dispose of rights of parties? – Leave to appeal against final order.

The appellant sued the respondent for wrongful dismissal and claimed inter alia the following relief.

(i) Declaration that he continues to be in employment of the respondent in and after September, 1979
(ii) Payment of salary at Rs. 1,620/- p.m. from September, 1979.
(iii) Payment of a sum of Rs. 3,240/- as salary for the months of September and October, 1979.
(iv) Payment of arrears in a sum of Rs. 40,000/- together with legal interest thereon.

Judgment was entered ex parte for appellant in terms of (i), (ii) and (iv), and decree was entered in accordance with judgment.

The appellant applied for execution of decree but the respondent sought to amend the judgment and decree on grounds of an accidental slip made by the Judge.

After inquiry the Judge came to the conclusion that (iv) should be corrected to read as (iii) and amended the decree accordingly.

The appellant moved court for leave to appeal against this order.

The respondent opposed it on the ground that the order made is a final order having the effect of a final judgment and therefore the application for leave to appeal was misconceived.

Held –

That order made amending judgment and decree was one which finally disposed of the rights of parties and was a final order from which an appeal lay direct to the Appeal Court and that the application for leave to appeal was misconceived.

Cases referred to:

(1) *Salaman v. Warner and others (1891) 1 Q.B.D., 734.*
(2) *Bozson v. Altrichman Urban District Council (1903) 1 K.B.D. 547.*
(3) *Ranjilal and others v. Ratanachand and others (1920) A.I.R. 86.*
(4) *Abdul Rahaman and others v. Cassim Sons and another (1933) A.I.R. 58 (P.C.).*
(5) *Usoof v. The National Bank of India Ltd. (1958) 60 N.L.R. 381.*
(6) *Krishna Porshad Singh v. Moti Chand (1913) 40 Cal 635.*

APPLICATION for leave to appeal from order of the District Court of Colombo

Nimal Senanayake, S.A. with *K.P. Gunaratne* and *Saliya Mathew* for appellant.

H. W. Jayewardene, Q.C. with *M. Kandasamy, K. Thevarajah* and *S. Sittampalam*, for respondent.

Cur.adv.vult.

July 9, 1982.

L.H. DE ALWIS, J.

This is an application for leave to appeal from the order of the District Court of Colombo, dated 10.5.82, amending the judgment and decree entered in the case.

The appellant sued the respondent for wrongful dismissal from service and claimed inter alia the following reliefs:-

(අ) a declaration that he continues to be in the employment of the respondent Corporation in and after September 1979;
(ආ) the payment of his salary at Rs. 1,620/- per month from September 1979;
(ඇ) the payment of a sum of Rs. 3,240/- as salary for the months of September and October 1979;
(ඈ) the payment of damages in a sum of Rs. 40,000/- together with legal interest thereon.

During the pendency of the action steps were taken by the President of the Republic, as Minister of Defence, to dissolve the respondent Corporation and a liquidator was appointed from 1.1.1980. On 13.3.80 the case was taken up for trial and in view of the absence of the respondent, judgment was entered ex parte for the appellant as prayed for in terms of paragraphs (අ), (ආ), and (ඇ). Decree was thereafter entered in accordance with the judgment.

It is not relevant to refer to any other facts for the purposes of this application, except the application the liquidator made to amend the judgment and decree in terms of section 189 of the Civil Procedure Code on the grounds of an accidental slip or omission made by the learned District Judge in his judgment. This application was made at the stage when the appellant applied for execution of the decree.

After inquiry the learned District Judge was of the view that it was not clear from the typewritten judgment whether the relief granted by the Court was in terms of paragraphs (අ) or (ඇ) of the prayer to the plaint. After a consideration of the evidence of the appellant and the judgment the learned Judge came to the conclusion that the letter (අ) in line 8 of paragraph 1 of the Judgment is not (අ) but (ඇ). He then made Order dated 10.5.82 that the judgment and decree should be amended accordingly on account of the accidental slip in the judgment. He also directed that the decree should be amended in regard to the relief claimed in paragraph (අ) of the prayer to the plaint as follows:-

> "To pay the plainfiff Rs. 6,480/- as salary from September 1979 to December 1979 at the rate of Rs. 1,620/- per month."

It is from this order allowing the amendment set out above that the appellant now moves this court for leave to appeal, under section 754 (1) of the Civil Procedure Code.

Learned Queen's Counsel for the respondent opposed the application on the ground that the order made by the District Court is a final order having the effect of a final judgment under section 754 (5) and an application for leave to appeal to this Court therefore does not lie. Being a final order or judgment, an appeal lay direct to this Court under section 754 (1) and not with the leave of Court first obtained in terms of section 754 (2) Civil Procedure Code.

The contention of learned Senior Attorney for the appellant on the other hand is that the order of the District Court is not a final order but an interlocutory order and that an appeal lies to this Court with leave under section 754 (2).

The question that arises for determination, therefore, is whether the order of the District Judge amending the Judgment and decree is a final or an interlocutory order.

"Judgment" and "order" are defined in section 754 (5) as follows:-

"Notwithstanding anything to the contrary in this Ordinance for the purpose of this chapter - 'judgment' means any judgment or

order having the effect of a final judgment made by any Civil Court; and 'order' means "the final expression of any decision in any civil action, proceeding or matter which is not a judgment."

Learned Queen's Counsel for the respondent contended that any order which finally disposes of the rights of parties to the matter, has the effect of a final judgment and the order affecting those rights have to be appealed from. In the present case, he submitted, the order for the amendment of the decree is a final order since the matter is disposed of whether the decision is right or wrong. If the order is right then the judgment would be amended. On the other hand if it is wrong, the original judgment and decree would stand. In either event there is an end to the dispute between the parties. Hence it is argued, that the order is a final order and leave to appeal does not lie. Learned Queen's Counsel cited two unreported cases, one of this court in CA/LA. 133/81 C.A. Minutes of 12.5.82 and the other of the Supreme Court in S.C. 6/81 C.A. 997/80 D.C. Colombo 3290 ZL-S.C. Minutes of 20.11.81.

The two unreported cases cited by learned Queen's Counsel though they do not have a direct bearing on the facts of this case are nevertheless helpful for the authorities considered there, which throw considerable light on the question of what a final order is.

In Salaman v. Warner and others (1) it was held that a "final order" is one made on such an application or proceeding that, for whichever side the decision is given, it will, if it stands, finally determine the matter in litigation. Lord Esher, M.R. said:-

> "The question must depend on what would be the result in the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will if it stands, finally dispose of the matter in dispute, I think that for the purposes of these Rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

Fry, J., in the same case said:

> "I conceive that an order is 'final', only where it is made upon an application or other proceeding which must, whether such application or proceeding fail or succeed, determine the action. Conversely I think that an order is 'interlocutory' where it cannot be affirmed that in either event the action will be determined."

8-1

In *Bozson v Altrincham Urban District Council* (2) 547, Lord Alverston, C.J. said:

> "It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

In *Ranjilal and others v Ratanachand and others* (3), it was held that an order refusing a stay of a suit under section 19 of the Arbitration Act is not final. Viscount Cave said:

> "The question as to what is a final order was considered by the Court of Appeal in the case of *Salaman V. Warner* (1) and that decision was followed by the same Court in the case of *Bozson v. Altrincham Urban District Council* (2). The effect of these and other judgments is that an order is final if it finally disposes of the rights of parties. The orders now under appeal do not finally dispose of these rights, but leave them to be determined by the Courts in the ordinary way".

In *Abdul Rahaman and others v. Cassim Sons and another* (4) it was held that the test of finality is whether the order "finally disposes of the rights of the parties". Where the order does not finally dispose of these rights, but leaves them "to be determined by the Courts in the ordinary way", the order is not final. That the order "went to the root of the suit, namely, the jurisdiction of the Court to entertain it", is not sufficient. The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it under section 109(a)."

In the present case, learned Senior Attorney for the appellant submitted that judgment and decree had already been entered, finally determining the action between the parties and an order made at the stage of the application for execution of the decree is of an interlocutory nature. There could not be a further final judgment and decree between the parties. The answer to this submission is given by Sansoni, J., as he then was, in *Usoof v. The National Bank of India Ltd.*, (5). He said:

> "I regard that decision *(Krishna Porshad Singh v. Moti Chand* (6) as authority for the view that there can be a final order or judgment in execution proceedings between the p[illegible]

to the action.... It seems to me to dispose of the argument that when the mortgage decree was entered in this action it had been finally determined, and that there could be no further final judgment as between the parties. While it is true that a judgment is not final unless it finally disposes of the rights of the parties...., I do not see why there cannot be a final judgment in execution proceedings, whether those proceedings are between the parties to the action or not."

In the Indian case of *Krishna Pershad Singh* (6) referred to by Sansoni, J., Lord Moulton held that the order of the High Court refusing to set aside the sale where the property sold in execution of the decree was purchased by the judgment-creditor was a final order which dealt finally with the rights of the parties, and that an appeal to the Privy Council lay to the judgment-debtor.

In the instant case, the order made amending the judgment and decree is one which finally disposes of the rights of the parties to the matter and is a final order from which an appeal lies direct to this court under section 754 (1) of the Civil Procedure Code. The application for leave to appeal from this order in terms of section 754 (2) of the Civil Procedure Code is wrongly constituted and must be refused.

I dismiss the application with costs.

ATUKORALE, J. — I agree.

Application dismissed.