MANU/BH/0163/1970

**Equivalent Citation:** 1970PLJR242

**IN THE HIGH COURT OF PATNA**
**FULL BENCH**

S.C.A. No. 244 of 1968

Decided On: 21.01.1970

Appellants:**Sudhir Chandra Sarkar**
**Vs.**
Respondent:**Tata Iron and Steel Co. Ltd. and Ors.**
[Alongwith S.C.A. No. 255]

**Hon'ble Judges/Coram:**
*S.C. Mishra, C.J., Udai Sinha and A.B.N. Sinha, JJ.*

**Counsels:**
*For Appellant/Petitioner/Plaintiff: Mr. S.K. Mazumdar*

*For Respondents/Defendant: Lal Narain Sinha and L.K. Choudhary*

**JUDGMENT**

**Udai Sinha, J.**

**1.** These are applications for leave to appeal to the Supreme Court of India against the decision of this Court dated the 6th August, 1968, passed in First Appeals no. 444 of 1963 and No. 554 of 1964. Sri Sudhir Chandra Sarkar, plaintiff of money suit no. 452 of 1962 has filed an application under Sections 109 and 110 of the Code of Civil Procedure read with Article 133(1)(c) of the Constitution of India and the case has been numbered as Supreme Court appeal no. 244 of 1968. Sri Bantwal Basudeva Mallya, plaintiff of money suit no. 900 of 1963, a different person, has also filed an application under Sections 109 and 110 of the Code of Civil Procedure read with Article 133(1)(c) of the Constitution of India and the case has been numbered as Supreme Court appeal no. 255 of 1968. In Supreme Court appeal no. 255 of 1968 an application has been filed under Order XLV Rule 4 and Section 151 of the Code of Civil Procedure praying that the two Supreme Court appeals may be made analogous and consolidated for the purpose of pecuniary jurisdiction. Each of these suits was valued at less than Rs. 20,000. The facts on which the question for consideration has arisen are as follows; Sri Sudhir Chandra Sarkar had instituted a money suit for recovery of Rs. 16,496.18 paisa against the defendants on account of unpaid gratuity dues. The suit had been decreed by Sri Arabinda Mukherji, Subordinate Judge, Jamshedpur on the 17th May, 1963, Sri Bantwal Basudeva Mallya had brought his money suit for recovery of Rs. 11,550/- on account of gratuity dues, against the defendant and the suit was dismissed by Sri Ramavatar Lal Dass, who was then a Subordinate Judge at Jamshedpur, on the 10th September 1964. Thereafter, no. 1 of Sri Sarkar's suit had filed First appeal no. 444 of 1963 and Sri Mallya had filed first appeal no. 554 of 1964. The two appeals were heard together by this Court and by a common judgment passed on the 6th August, 1968, First appeal no. 444 of 1963 was allowed and First appeal no. 554 of 1964 was dismissed. In the result, Sri Sudhir Chandra Sarkar's suit failed by the judgment and decree of this Court and the

dismissal of Sri Mallya's suit was affirmed. Thus Sri Sudhir Chandra Sarkar and Sri Bantwal Basudeva have filed the two Supreme Court appeals mentioned above.

**2.** Learned counsel appearing for the appellants has relied upon his application filed under Order XLV Rule 4 of the Code of Civil Procedure, urging that the two appeals are governed by the same judgment of this Court, involving the same point of law and the appeals can be conveniently decided together and he has prayed that for the purpose of pecuniary jurisdiction the two cases may be consolidated. The question of law under consideration is whether Order XLV Rule 4 of the Code of Civil Procedure will permit such consolidation.

**3.** Order XLV Rule 4 of the Code of Civil Procedure reads as follows:--

> For the purposes of pecuniary valuation, suits involving substantially the, same questions for determination and decided by the same judgment may be consolidated, but suits decided by separate judgments shall not be consolidated notwithstanding that they involve substantially the same questions for determination.

On behalf of the appellants reliance was placed on an early decision of this Court, in the case of (1) Deokinandan Prasad V. Narsingh Raut, reported in 6 PLJ 97 and upon an order of consolidation passed by this Court on the 31st October, 1962 in (2) Supreme Court appeal no. 56 of 1962. Learned counsel for the appellants has also referred to certain decisions of other High Courts to which reference will be made in due course. The salient features of Deokinandan Prasad's case (6 P.L.J. 97. A.I.R. 1921 Pat 97) are these. Suits numbering 49 in all had been tried by the Subordinate Judge, Patna. Only one of these suits was valued over Rs. 10, 000/- That suit had been dismissed and the appeal filed by the plaintiffs in High Court bad failed. In some of the other suits appeals had been filed before the Court of appeal below and the decrees of the trial Court had been affirmed. Thereafter, a number of second appeals had been filed in this Court and this Court had affirmed the decision of the District Judge. A question of consolidation had arisen out of fourteen cases the total valuation of which had amounted to Rs. 7,290/-. For the purposes of pecuniary valuation this Court was asked to exercise its power under Order XLV Rule 4 of the Code of Civil Procedure and to consolidate these fourteen suits with the only suit which was valued over Rs. 10,000/-. The petitioner's contention in the High Court was that as all the suits had been decided in the first court by the same judgment and (Sic) the provision of Order XLV Rule 4 was available to them. On the interpretation of this provision of law this Court stated as follows;--

> Reading that rule I do not think that there can be any question but that the word judgement there used refers to the judgment appealed against. That is the judgment which is being considered in rule 4 and to suggest that because the suits were originally in the court of first instance decided in on a judgment therefore, whatever may have happened to them subsequently and whether decided eventually in the High Court by the same judgment or by a number of judgments, there should in such case be power to consolidate for the purpose of appeal to His Majesty in Council is in my opinion to give a meaning to Order XLV, Rule 4 which it was never intended to bear. The important thing is that the judgment which their Lordships have to consider and from which an appeal is brought should be the same judgment in the consolidated appeals and not that they should have in the same case or in the same appeal to consider the effect of several separate judgments of the

High Court.

Thus, the petitioners failed to get an order of consolidation. The salient facts appearing from the order dated the 31st October, 1962 passed by this Court in Supreme Court appeal no. 56 of 1962 are these; on an application filed for the consolidation of that appeal with Supreme Court appeal no. 75 of 1962, it was submitted before this Court that although the two title suits filed before the trial court had been heard and decided separately, the High Court had dealt with both the first appeals by the same judgment and, therefore, the two suits in question could be consolidated under Order XLV Rule 4. It was held by this Court that under the High Court dealt with both the appeals by a single judgment, the provision of order XLV Rule 4 was satisfied. No doubt the order passed in Deoki Nandan Prasad's case supports the contention raised by learned counsel for the appellants, but it is hardly possible to uphold the view expressed there in. The words of Rule 4 Order XLV are clear when it states that suits involving substantially the same questions for determination and decided by the same judgment may be consolidated. The word "judgment" here must refer to the judgment in the suits. This has been clarified by the second part of the rule where the negative aspect has been emphasised, so that suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination. The word "judgments" appearing in this part of the rule clearly refers to the judgments in the suits. I Therefore, the words "judgment" and "judgments" appearing in Order XLV Rule 4 must refer to the judgment or judgments passed in the suits. This must be so because Rule 4 of Order XLV refers to consolidation of suits and there ought not to be any question of importing the significance of judgment or judgments appealed against. The order passed in Supreme Court appeal no. 56 of 1962 has not dealt with the question under consideration in any detail. The two suits under consideration in the two Supreme Court appeals in that case had been decided by two separate judgments, by two different subordinate judges, on different dates and it is not at all clear from the order of this Court as to what arguments had been advanced on the interpretation of Order XLV Rule 4. The two appeals consolidated by this Court, by order dated the 31st October, 1962 were not pressed before the Supreme Court, as the record indicates, and, therefore, we do not know what view the Supreme Court would have taken upon the question of consolidation. Learned counsel for the appellants has relied upon two decisions of the Madras High Court reported in (2) MANU/TN/0132/1931 : A.I.R. 1932 Mad 125 and (4)A.I.R. 1949 Mad 739 (FB). In the case of (3) (Sree Rajah) Vasi Reddi Srichandra Mouleswar Prasad Bahadur Zamindar Garu V. Secy. of State and others (MANU/TN/0132/1931 : A.I.R. 1932 Mad 125), the decision of this Court reported in 6 P.L.J. 97 A.I.R. 1921 Pat 97 was followed on the meaning of the word "judgment" occurring in Order XLV Rule 4 of the Code. Approving the view of this Court it was held that the expression meant the judgment appealed against. But Vasi Reddi's case is quite distinguishable, as it was held there that the two separate judgments of two separate suits under consideration had really amounted to one judgment of the trial court. The learned judge of the Madras High Court stated that a comparison of the so-called separate judgments of the first court showed that the second judgment was practically a copy of the first court's judgment, re-written omitting a few sentences or paragraphs. It was held that in a matter of this kind, the spirit of Rule 4 should be locked into and the two judgments of the lower court must be regarded as the same judgment. Therefore, Vasi Reddi's case is not of assistance to the learned counsel for the appellants. In the case of (4) Molugu Lakhminarasimha Charyulu and others V. Marisetti Ratnam and others [(FB) A.I.R. 1949 Mad. 739)], the learned judges of the Madras High Court approved the earlier Madras decision dealt with above. But this case is also

distinguishable on the same ground on which I have held that Vasi Reddi's case is not of assistance to the appellants. In Molugu's case also, it was held that the different judgments given by the trial court were really in substance one judgment. On the same ground the case of (5) Kishanlal Nandlal and another V. Vithal Nagayya, reported in MANU/NA/0003/1956 : A.I.R. 1956 Nag. 276, relied upon by learned counsel for the appellants is not of assistance to him. The learned Judges of the Nagpur High Court had also proceeded on the footing that consolidation could be ordered if the separate judgments were substantially the same. There are a number of decisions of other High Courts holding that in interpreting Order XLV Rule 4 of the Code, the relevant point for consideration is the judgment of the trial court. In the case (6) of Shri Hori Lal and another V. The Board of Revenue, U.P. Allahabad and others, reported in MANU/UP/0028/1960 : A.I.R. 1960 Alla 133 the decisions reported in MANU/TN/0132/1931 : A.I.R. 1932 Mad 125, inA.I.R. 1949 Mad. 739 (FB) and in (5) MANU/NA/0003/1956 : A.I.R. 1956 Nag. 276 have all beer considered. The view expressed by the Madras and Nagpur High Courts about the identity of two separate judgments making them one and the same had not been approved by the Allahabad High Court. However, 1 have distinguished the Madras and the Nagpur decisions, holding that they are not of assistance to the appellate for the purpose of deciding the question in issue before us and, on facts the decision of the Allahabad High Court is not of very much importance in this connection. The next case to which our attention has been drawn on behalf of the contesting opposite party is the case of (7) Firm Kishori Lal Jagannath Pd. V. Firm Murlidhar Banwarilal, reported in I.L.R.MANU/RH/0075/1960 : (1961) 11 Raj 735. The relevant portion of the judgment may be quoted below:--

> There appears to be some divergence of judicial opinion about the construction of Order XLV Rule 4, Civil Procedure Code. It is futile to discuss the various cases cited at the Bar because it seems to us that on the face of it the appellants are not entitled to the advantage of the Rule and there can be no consolidation of the suits in the circumstances of this case. Evidently as the language of the Rule shows it applies only to those cases where the suits themselves have been determined and decided by a common judgment and involve substantially the same questions for determination. It is not that the word 'appeals' has been used in the Rule. The legislature had a definite purpose in mind in using the word 'suits' instead of 'appeals' and if the idea was that in appeals also where they were disposed of by the same judgment and involved substantially the same questions for determination, the above rule would apply, the legislature could have easily said so and had appropriate expressions to give effect to its meaning. We are, therefore, clearly of opinion that R. 4 of O. XLV will have no application to such a case. It is only for the sake of convenience that we heard the two appeals together, otherwise the two suits were entirely different and had been treated at all earlier stages separately for all intents and purposes. We, therefore, think that the requirements of Section 110 are not fulfilled in this case.

I may mention that in the Rajasthan case the appeals in the High Court had also been disposed of separately by separate judgments, but for the disposal of the matter in controversy in the instant casts, all that is necessary is to approve the view taken by the Rajasthan High Court, holding that Order XLV, Rule 4 will apply where the suits themselves have--been determined and decided by a common judgment involving substantially the same question for determination. The case of (4) Khusi Ram Relu Ram V. Smt. Bhago and another, reported in A.I.R. 1956 Pun 32 is also in point. In this case the decisions reported in MANU/TN/0132/1931 : A.I.R. 1932 Mad 125 and

A.I.R. 1949 Mad. 739 (FB) were distinguished and it was held that when two suits were tried by different courts in the first instance, consolidation was not permissible under Order XLV Rule 4 of the Code.

**4.** On a consideration of the contention raised on behalf of the parties, I am of the view that consolidation of the two suits for the purpose of pecuniary valuation in these cases, under Order XLV, Rule 4 of the Code of Civil Procedure cannot be allowed and the prayer to this effect must be refused. I have mentioned that the two appellants have filed their leave applications under Article 133(1)(c)of the Constitution of India, but at the time of argument only the question of consolidation was pressed and no argument was advanced for grant of certificate under Article 133(1)(c) of the Constitution. In the result, certificates in the two cases are refused. There will be no order for costs.

**S.C. Mishra, C.J.**

I agree.

**A.B.N. Sinha, J.**

I agree.