

SHAH
v.
HATTON NATIONAL BANK AND OTHERS

COURT OF APPEAL.
EDUSSURIYA, J. (P/CA)
C.A./L.A. NO. 143/99.
D.C. COLOMBO 5295/99 Spl
13TH OCTOBER, 1999.
19TH NOVEMBER, 1999.

Enjoining Order - Disobeyed - Civil Procedure Code - S. 793, S. 797 (1) (2) and S.798 - Before pleading takes legal objection - Is it a direct Appeal or an Interlocutory Appeal.

The District Court enjoined the Ceylon Bank Employees Union (CBEU), its members, servants, agents and all those holding under and through it from any manner engaging in any strike,

The Plaintiff Respondents had filed Petition and Affidavit and moved that summons be issued under S. 793 CPC on the Petitioner, who is the General Secretary of the CBEU for disobeying the enjoining order.

The Petitioner on appearing in Court in answer to summons stated that he is not prepared to plead to the charge, as he has not been enjoined and also not a party to the action. This objection was over-ruled by Court. The Petitioner thereafter sought leave to appeal from the said order.

It was contended by the Plaintiff Respondent, that a direct appeal lies against the said order.

Held :

(i) A reading of S. 797(1), 797(2) and S. 797(3) implies that the word "order" in S. 798 refers to an order of acquittal.

(ii) Words 'every order' do not contemplate an order of the type canvassed by the application for Leave to Appeal or an interim order made in the course of an inquiry with the charge of contempt after the accused has pleaded to the charge.

Per Edussuriya J.,

"there is a lacuna in the law with regard to the mode of appeal in respect of such interim orders. In the circumstances recourse must necessarily be had to provisions relating to interlocutory appeals as laid down in S. 754(2).

AN APPLICATION for Leave to Appeal

Case referred to :

1. *Thuraisingham vs. Karthikesu* - 50 NLR 570 at 574.

Fatiz Musthapha, PC with Fatzer Musthapha for the Petitioner.

Y.J.W. Wijetilake DSG for 1st Respondent.

Romesh de Silva, PC with Palitha Kumarasinghe for the Respondent.

Cur. adv. vult.

March 07, 2000.

EDUSSURIYA, J. (P/CA)

On 24th March 1999 the District Judge of Colombo enjoined the Ceylon Bank Employees' Union, its members, servants, agents and all those holding under and through it, from in any way or manner engaging in any strike and/or other form of trade union action including go-slow, boycott, picketing and/or any form of collective action against any of the Plaintiffs.

On 1st April 1999 the Plaintiffs-Respondents had filed Petition moving that summons be issued in terms of the provisions of Section 793 of the Civil Procedure Code on the Petitioner who is the General Secretary of the Ceylon Bank Employees' Union for disobeying the enjoining order which enjoined the Bank Employees Union, its members, servants, agents etc. from doing certain acts.

The first part of the charge is to the effect that the Petitioner (Accused) struck work and "picketed" etc. The second part of the charge is that the Petitioner (Accused) failed

to take steps to prevent the strike etc. whereas the third part of the charge is that the Petitioner is responsible for the strike, "Picketing" etc.

The Petitioner on appearing in Court in answer to summons stated that he is not prepared to plead to the charge in as much as it is the Ceylon Bank Employees' that had been enjoined and further that he the Petitioner is not a party to the action.

After inquiry the learned District Judge overuled the objection. This application for leave to appeal has been filed from that order.

Counsel for the Plaintiff-Respondent has raised the objection that the Petitioner is not entitled to come by way of leave to appeal in view of the provisions of Section 798 of the Civil Procedure Code which sets out the mode and manner of appeal and contended that firstly any appeal must be by way of direct appeal and secondly, as set out in the Criminal Procedure Code.

These contentions were based solely on the language used in Section 798 of the Civil Procedure Code which sets out that "An Appeal shall lie to the Supreme Court from every order, sentence, or conviction made by any Court in the exercise of its special jurisdiction to take cognizance of, and to punish by way of summary procedure the offence of contempt of Court, and of offences by this Ordinance made punishable as contempt of Court; and the procedure on any such appeal shall follow the procedure laid down in the Criminal Procedure Code regulating appeals from orders made in the ordinary criminal jurisdiction of District and Magistrates Courts".

The question which arises for answer first, is whether an order such as the one which is appealed from, namely, an order made overuling the preliminary objection prior to the Petitioner pleading to the charge of contempt is one which is contemplated in Section 798.

A reading of Section 797 (1), 797 (2) and especially 797 (3) implies that the word “order” in Section 798 refers to an order of acquittal.

In interpreting the words “An appeal shall lie to the Supreme Court from every order, sentence, or conviction made by any Court in Section 798 Dias J With Gratiaen, J agreeing in *Thuraisingham Vs. Karthikesu*⁽¹⁾ at 574 stated “The true intention underlying Section 798 is that while a right of appeal exists in every case against an order, sentence or conviction in a contempt proceeding, the general rules of procedure contained in Chapter XXX of the Criminal Procedure Code, so far as they are applicable must be followed in order to bring the case before the Supreme Court.” So that clearly, the words “every order” do not contemplate an order of the type canvassed by the application for leave to appeal or an interim order made in the course of an inquiry with the charge of contempt after the accused has pleaded to the charge.

Thus it is my view that there is a lacuna in the law with regard to the mode of appeal in respect of such interim orders. In the circumstances recourse must necessarily be had to the provisions relating to interlocutory appeals laid down in Section 754 (2).

This Court therefore holds that the Petitioner is correctly before this Court.

Preliminary objections over-ruled