

(1973) 10 KL CK 0022
In the High Court Of Kerala
Case No : R. P. No. 80 of 1973

Abdul Kareem

APPELLANT

Vs

District Medical Officer, Ernakulam

RESPONDENT

Date of Decision : 26-10-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 47 Rule 5, Order 9 Rule 9, 141, 4(1)
Constitution of India, 1950 — Article 133, 134, 226

Citation : AIR 1974 Ker 167

Hon'ble Judges : P. Govindan Nair, J;K. Sadasivan, J

Bench : Division Bench

Advocate : P.C. Chacko, for the Appellant;

Judgement

K. Sadasivan, J.—A question of jurisdiction arises in this review and as Khalid, J., thought the question has to be decided by a Division Bench this has come up before us on an order of reference passed by the learned judge. Writ Appeal 75 of 1973 was decided by a Division Bench composing of Raghavan C. J., and Khalid, J. Since then Raghavan C. J., retired from service and the application for review was, therefore, presented before Khalid, J. The O.P. from which the Writ Appeal arose was one under Art. 226 of the Constitution to quash certain orders passed by the District Medical Officer of Health and the Director of Health Services against the petitioner one P.K. Abdul Kareem, a hospital attender. The learned Single Judge dismissed the O.P. Against it the Writ Appeal was filed before a Division Bench and that was dismissed in limine. It is against the order of the Division Bench that the review has been filed. Under O. XLVII, R. 5 CPC., where one of the judges who passed the decree or order continues to attach himself to the court at the time the application for review is presented can bear the application; but the question here is whether the review itself is maintainable. S. 141 CPC. lays down that the procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. Art. 226 of the Constitution has

conferred an extraordinary jurisdiction on the High Court and the mode of exercising the same is governed by Rules that the court has framed. A Division Bench of the Rajasthan High Court in Ramsingh Vs. State of Rajasthan and Others, has, in similar circumstances, held:

The provisions contained in the Civil P.C. will not be attracted to this special jurisdiction in terms, because S. 4(1) of the Civil P.C. provides that in the absence of any specific provision to the contrary, nothing in this code shall be deemed to limit or otherwise affect any special or local law not in force or any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. It is thus clear that special procedure has been provided in the Rules of the High Court for writ proceedings under Art. 226 of the Constitution and, therefore, the provisions of the Civil P.C. cannot apply in terms to such proceedings. This, however, does not mean that the principles contained in the CPC would have no application at all to the writ proceedings. Those provisions of the Civil P.C. which do not come in conflict with the Rules made by the High Court of Rajasthan and which can be suitably made applicable to the writ proceedings will apply to writ proceedings. In other words, even though the provisions of the Civil P.C. may not apply with full rigour to writ proceedings, writ proceedings would nonetheless be governed by the principles analogous to those contained in the CPC as far as they are not inconsistent with the Rules made by the High Court on the subject.

These observations were made by the learned judges in connection with the question whether the provisions of O. 9, R. 9 can suitably be applied to writ proceedings.

2. A Division Bench of the Madras High Court in C. Chenchanna Naidu Vs. Praja Seva Transports Ltd., Cuddappah and Another, held that:

If the application for the issue of a writ under Art. 226 is made on the civil side, in dealing with such an application the High Court is governed by the provisions of the CPC and the High Court has jurisdiction to review its order under Art. 226.

In coming to this conclusion the learned judges of the Division Bench examined the entire case-law and relied on an earlier decision of the Madras High Court in Ryots of Garabanda and Others Vs. Zamindar of Parlakimedi, . The Andhra Pradesh High Court in Income Tax Officer, Masulipatnam and Another Vs. K. Srinivasa Rao, following the above decision of the Madras High Court has observed that the provisions of O. 47 of the Civil Procedure Code would apply to the proceedings under Art. 226 of the Constitution.

3. The Supreme Court has observed in S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, that:

there is no ground for restricting the expression "civil proceeding" only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings

instituted and tried in the High Court in exercise of its jurisdiction under Art. 226, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of the powers conferred upon them by revenue statutes.

In *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, the matter has further been clarified. On page 1447 the learned judges would observe:

The question is whether the proceedings in the High Court can be described as civil proceedings..... The term civil proceeding has been held in this court to include at least all proceedings affecting civil rights, which are not criminal. The dichotomy between civil and criminal proceedings made by the Civil Law Jurists is apparently followed in Art. 133 and 134 and any proceeding affecting civil i.e., in private rights, which is not criminal in nature, is civil. This view was expressed recently by this court in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, . Shah, J., speaking for the majority, first summarises all the provisions in the Constitution bearing upon appeals to this court and after analysis, holds that the words "civil proceeding" are used in the widest sense, that in contradistinction to criminal proceedings they cover all proceedings which affect directly civil rights. A proceeding under Art. 226 for a writ to bring up a proceeding for consideration must be a civil proceeding, if the original proceeding concerned civil rights. Here the civil rights of the parties were directly involved and the proceeding before the High Court was thus a civil proceeding.

A proceeding under Art. 226 of the Constitution being civil proceeding, the procedure provided in the CPC must apply to such proceedings:

4. Following the decision of the Supreme Court, the Calcutta High Court in *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*, held that:

There was no ground for restricting the expression "civil proceeding" only to those proceedings which arose out of civil suits or proceedings" and for excluding from the purview of civil proceedings the writ petitions tried by the High Court in exercise of its jurisdiction under Art. 226 of the Constitution. Writ petitions must, therefore, be held to be a civil proceeding although it is heard by this court in its extraordinary originator civil revisional jurisdiction.

The same view has been shared by various other High Courts also. The Allahabad High Court, for instance, has held in *Asst. District Panchayat Officer and Others Vs. Jai Narain Pradhan*, that:

When the proceedings in a High Court on a petition under Art. 226 of the Constitution relate to civil rights, they are civil proceedings. Being civil proceedings, the provisions of CPC apply to them under S. 141 of the C.P.C., in so far as the provisions of the Code can be made applicable. The last qualifying clause means that the provisions of the Code would apply to the proceedings under Art. 226, except to the extent to which their applicability may be affected

by the Rules of Court or any special law or rule applicable to these proceedings.

The Gujarat High Court in *Ibrahimbhai Karimbhai and Others Vs. State of Gujarat*, has observed:

An application under Art. 226 praying for issuance of a writ, direction or order, is a proceeding in a court. The proceedings contemplated by S. 141, CPC include the original matters in the nature of the suit as has been laid down by the Privy Council in (1894) ILR 17 106 (Privy Council) . The jurisdiction which the High Court exercises under Art. 226 is an original jurisdiction. Therefore the writ proceedings are the proceedings of original nature. The jurisdiction which the court exercises in issuing the writs of certiorari is a civil jurisdiction. We, therefore, hold that the proceedings under Art. 226 are the proceedings in the court of civil jurisdiction.

5. As against the above array of judicial pronouncements in favour of the view that the procedure laid down in the CPC is applicable to writ proceedings in so far as they are not inconsistent with the Rules of the High Court, the learned Government Pleader cited *Hajee Suleman Vs. Custodian, Evacuee Property*, , where it was held that:

the power to review is not inherent in a court. As there is no provision for the review of orders under Art. 226 in Indian law, it cannot be availed of as a remedy. The High Court therefore cannot review an order passed in a writ case.

A stray observation is seen *Management of Rain Bow Dyeing Factory Salem and Others Vs. Industrial Tribunal, High Court Buildings, Madras and Another*, also to the effect that O. 1 of the CPC. cannot apply to writ proceedings in as much as a writ proceeding cannot be held to be in the nature of a civil suit. Our attention was drawn also to a Division Bench ruling of this court in *A.V. Balan Vs. The District Collector, Trichur and Others*, where the court had to consider the question whether O. 33 CPC. would apply to writ proceedings under Art. 226 and it was held that O. 33 CPC. can apply only to suits and in so far as proceedings under Art. 226 are not suits O. 33 can have no application; (in *Lt. Col. Khajoor Singh Vs. The Union of India and Another*, the Supreme court has held that the proceedings under Art. 226 are not suits). These decisions, therefore, are of no consequence is deciding the question whether the CPC can have application to proceedings under Art. 226 of the Constitution.

Our conclusion, therefore, is that proceedings under Art. 226 are proceedings of a civil nature, even though writ jurisdiction is exercised by the High Court in its special original jurisdiction. The provisions of the CPC including the provisions in O. 47 in so far as they are not inconsistent with the Rules of the High Court governing writ jurisdiction, must apply to proceedings under Art. 226. The application for review is. therefore, entertainable by the learned judge who continues to attach to the High Court at the time the review was presented. With these observations, we remit the application for review to the learned Single Judge for disposal.