

(1974) 03 KAR CK 0015

In the Karnataka High Court

Case No : Civil Revision Petition No's. 2510 to 2531 of 1973

Albert D'Souza and Others

APPELLANT

Vs

The Divisional Controller and Deputy General Manager,
Mysore State Road Transport Corporation, Hassan Division,
Hassan

RESPONDENT

Date of Decision : 13-03-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11D, 115, 96
Karnataka Civil Courts Act, 1964 — Section 20

Citation : AIR 1975 Kar 82 : (1974) ILR (Kar) 809

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Advocate : P. Rangaswamy, for the Appellant; K.S. Puttaswamy, for the Respondent

Judgement

1. A common question of law arises in all these twenty-two revision petitions.
2. These revision petitions are filed against rejection of complaints in different suits filed by the petitioners in the Court of the Munsiff, Hassan.
3. The petitioner-plaintiffs filed those suits contending that the disciplinary enquiries proposed to be held by the Divisional Controller, Hassan, were beyond the powers of the said Divisional Controller and hence, he could not, in law, proceed to hold disciplinary enquiries against them and pass orders of dismissal or such other orders and, therefore, the Court should declare that the action that was taken and further proposed to be taken by the Divisional Controller, was beyond his powers and issue an injunction restraining him from proceeding further into the proposed departmental enquiries against the petitioner-plaintiffs.
4. It was contended on behalf of the Divisional Controller that the Civil Court had no jurisdiction as the matter was governed by the provisions of the Industrial Disputes Act and, therefore, the suits were not maintainable and they were to be dismissed.

5. The learned Munsiff inquired into this contention in regard to jurisdiction and concluded by placing reliance on a decision of this High Court reported in (1968) 2 Mys LJ 194 : (1968 Lab IC 1571) that the jurisdiction of the Civil Court was barred by law. He, therefore, rejected the plaints by applying the provisions of Order 7. Rule 11 (d) of the CPC (to be hereinafter referred to as the Code). These are the orders challenged in those revision petitions.

6. Sri. K. S. Puttaswamy, the learned Advocate appearing on behalf of the respondent in all these matters, raised an objection that the revision petitions are incompetent in view of the specific provisions of Section 115 of the Code and the rejection of a plaint amounts to a decree and such a decree is appealable u/s 96 of the Code and u/s 20 of the Karnataka Civil Courts Act, 1964 (to be hereinafter referred to as the Act). He urged that the Court of the Civil Judge was the appellate Court and appeals against such decrees ought to have been filed before that Court. He pointed out that this Court has no jurisdiction to exercise its powers u/s 115 of the Code under these circumstances.

7. Sri P. Rangaswamy, the learned Advocate appearing on behalf of the petitioners, relied very heavily on the order D/- 14-7-1972 passed by this Court in Civil Revn. Petn. No. 950 of 1972. He contended that this order was passed by Datar, J., in regard to similar set of facts and circumstances, and pointed out that by that order Datar, J., had directed the suit to be disposed of by the Munsiff concerned and that showed that this Court had held that the Munsiff had jurisdiction to try the suit. He nextly urged that a similar order is to be passed in the petitions on hand.

8. The order passed by Datar, J., in Civil Revn. Petn. No. 950 of 1972 (Mys), reads as follows:--

"At the hearing of this revision petition the learned Advocate for the respondent stated that until the disposal of O. S. No. 461 of 1971 on the file of the II Additional I Munsiff of Mysore, the Deputy General Manager, Bangalore, will withhold further action and will not pass any further order in the matter. In view of this undertaking given to this Court, it is unnecessary to pass any interim order in O. S. No. 461 of 1971. Having regard to the nature of the dispute arising in the same, I direct the learned II Additional I Munsiff, Mysore, to dispose of O. S. No. 461/71 on his file not later than the 1st of October, 1972.

A copy of this order should be sent to the Court below within a week from this date."

It is clear that Datar, J., did not at all enter into the question whether the Munsiff had jurisdiction or not and whether the revision petition was maintainable or not. He simply acted on the submission made by the counsel for the respondent that until O. S. No. 461 of 1971 was disposed, further action proposed by the Deputy General Manager (Divisional Controller) in the matter of disciplinary enquiry would be withheld. He acting on such submission, directed the Munsiff to dispose of the suit not later than first of October, 1972. I am, therefore, not inclined to

agree with the contention of Sri P. Rangaswamy that by this decision, the High Court ruled that under a similar set of circumstances the civil -revision petition was maintainable and the II Additional I Munsiff, Mysore, had jurisdiction to deal with such matters, and such jurisdiction was not barred by the provisions of the Industrial Disputes Act

9. Whatever may be the view in regard to jurisdiction of the Court of the Munsiff in such matters, it is now to be seen whether this Court can exercise its powers u/s 115 of the Code. It has already been made clear that these revision petitions are directed against rejection of plaints in various suits by applying the provisions of Order 7, Rule 11 (d) of the Code. Section 2(2) of the Code defines "decree" as follows:--

" "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144, but shall not include--

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation, -- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:"

A reading of this definition leaves no doubt in my mind that rejection of a plaint amounts to a decree. So far as the Court of the Munsiff is concerned, the rights of the parties have been conclusively determined by this decree. It, therefore follows that the decrees are appealable under the provisions of Section 96 of the Code. Section 20 of the Act provides that appeals against the decrees passed by the Munsiffs are to be filed in the Courts of the concerned Civil Judges. I am, therefore, of the view that the petitioners had right of appeal to the Court of the Civil Judge at Hassan.

10. Sri P. Rangaswamy in this connection urged that even if an appeal lies, this Court can exercise its jurisdiction u/s 115 of the Code. He placed reliance on the decision in Kedarnath Lal and Another Vs. Sheonarain Ram and Others, This decision does support the contention of Sri P. Rangaswamy. It lays down that Section 115 of the Code means that the High Court cannot act only in those cases in which an appeal lies to that Court, and the fact that an appeal lies to the Lower Appellate Court does not take away the High Court's power of revision. It may be mentioned here itself that a contrary view has been taken by various other High Courts.

11. But, by now this controversy has been settled by the Supreme Court in Major

S.S. Khanna Vs. Brig. F.J. Dillon, . The Supreme Court has, after considering the decisions rendered by the Privy Council, Allahabad High Court and the Rajasthan High Court, found as follows:--

"If an appeal lies against the adjudication directly to the High Court, or to another Court from the decision of which an appeal lies to the High Court, it has no power to exercise its revisional jurisdiction, but where, the decision itself is not appealable to the High Court directly or indirectly, exercise of the revisional jurisdiction by the High Court would not be deemed excluded."

It is, hence, clear that if from the decision in question an appeal lies to a subordinate Court and the decision of such subordinate Court is appealable to the High Court, the High Court has no power to exercise its revisional jurisdiction. I have already pointed out that the petitioners had right of appeal to the Court of the Civil Judge u/s 96 of the Code and Section 20 of the Act. It is, therefore, certain that second appeals u/s 100 of the Code would lie to this Court as against the decisions rendered by the Civil Judge. Because of these facts and circumstances and the law being as laid down by the Supreme Court in the decision reported in Major S.S. Khanna Vs. Brig. F.J. Dillon, , it has to be held that this court cannot exercise its revisional jurisdiction u/s 115 of the Code.

12. In view of the foregoing reasons, I hold that these revision petitions are not maintainable in this Court, and reject them.

13. No order as to costs under the circumstances of the case.

14. Petitions rejected.