
(2006) 07 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 44300 of 2004

Bramha Swaroop

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Workmens Compensation Act, 1923 — Section 12(2), 30, 4A

Citation : (2006) 2 RD 333

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : N.I. Jafri and Rajiv Sisodia, for the Appellant; R.P.S. Chauhan and C.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This petition has been filed challenging the validity and correctness of the confirmation of auction sale of his agricultural land for a sum of Rs. 1,62,000/-.

2. It appears that case No. WCA 18 of 2001 was filed by the Tahsildar-respondent No. 5 against the petitioner in the Court of Commissioner, Bijnor Division, Bijnor under the Workmen's Compensation Act, 1923 claiming that Late Sri Radheyshyam, an employee of the petitioner, died in the course of employment.

3. The petitioner contested the case alleging that (i) Late Sri Radheyshyam was a Mechanic and was not an employee of the petitioner and (ii) the petitioner being a small farmer having only 16-17 bighas agricultural land was not in a position to engage employees.

4. The case of the petitioner is that he and respondent No. 5 entered into a

compromise, in pursuance whereof, he paid a sum of Rs. 50,000/- to the respondent No. 5 in the presence of villagers. Compromise deed dated 7.5.2002 has been filed as Annexure 1 to the writ petition.

5. It is alleged by the petitioner that though the dispute was settled in terms of the aforementioned compromise, but the respondent No. 5 filed WCA 18 of 2001 against the petitioner and obtained the impugned award dated 6.7.2002 (Annexure 2 to the writ petition) directing the petitioner to pay a sum of Rs. 1,19,850/-. The petitioner being a poor farmer, could not deposit the amount under the aforesaid award with the result, his land was auctioned on 15.7.2004 for a sum of Rs. 1,62,000/- and the auction sale has been confirmed.

6. Counsel for the petitioner contended that despite the fact that the petitioner is a very poor agriculturist and there was no relation of "master and servant" between the petitioner and late Sri Radheyshyam and that the petitioner has purchased peace by entering into a compromise. He submitted that as a matter of fact, the petitioner complied with the terms of the compromise and paid a sum of Rs. 18,500/- to the respondent No. 5 in the presence of certain villagers but the respondent No. 5 mischievously concealed this fact; filed WCA No. 18 of 2001 and obtained the impugned award by misguiding the Commissioner, Bijnor Region, Bijnor. He urged that the auction sale proceedings are liable to be quashed by this Court.

7. At the very outset, counsel for the respondents raised preliminary objection about the maintainability of the writ petition. He urged that the Commissioner appointed under The Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") is a Tribunal and not a Civil Court. Thus, Commissioner being not a Court within the meaning of Section 115 of the Code of Civil Procedure, any order passed by the Commissioner is not revisable by High Court. In support of this contention, he placed implicit reliance on a Full Bench decision of Madhya Pradesh High Court in Yeshwant Rao Vs. Sampat, . He further contended that in the present case, a money decree exists against the petitioner and the proper remedy available to him under the provisions of the Act is to file First Appeal From Order after depositing the decretal amount and submitting a certificate from the Commissioner in this regard. He drew the attention of the Court towards averments contained in the counter affidavit and submitted that not a single penny has been paid by the petitioner.

8. After hearing counsel for the parties, I am of the view that there is force in the preliminary objection raised by counsel for the respondents and without going into the merits of the case, this writ petition is liable to be dismissed solely on legal question of maintainability of the writ petition under Article 226 of the Constitution of India. It is settled law that the order of the Commissioner not being that of Civil Court is not revisable and only First Appeal From Order is maintainable. In this regard, reference may be made to Section 30 of the Act, which provides that no appeal by an employer shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that

the appellant has deposited with him the amount payable under the order appealed against. Section 30 of the Act is as under:

30. Appeals- (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty u/s 4A;

(b) an order refusing to allow redemption of a half monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or

(c) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions; Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees;

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties;

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against. (2) The period of limitation for an appeal under this Section shall be sixty days.

(3) The provisions of Section 5 of the Limitation Act, 1963 (36 of 1963) shall be applicable to appeals under this Section.

9. The petition is also not accompanied by certificate of the Commissioner that the decretal amount has been deposited by the petitioner with him in pursuance of the order appealed against. The writ petition is also not maintainable and for these reasons, the impugned order is to be given effect to within a month and all payments directed to be made therein shall be paid to the respondent No. 6, if already paid to her.

10. For the reasons stated above, the writ petition fails and is dismissed. No order as to costs.