
(1991) 08 PAT CK 0044

In the Patna High Court

Case No : Appeal From Appellate Decree No. 33 of 1989 (R)

Chandrika Ram

APPELLANT

Vs

Tata Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

Citation : (1991) 08 PAT CK 0044

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This second appeal arises out of a judgment and decree dated 2nd June, 1986 passed by Sri Anil Kumar Sinha, 3rd Additional District Judge, Dhanbad, in Title Appeal No. 66 of 1986 whereby and where under the said learned Court reversed the judgment and decree dated 2.9.1986 passed by Munsif, 1st Court, Dhanbad, in Title Suit No. 76 of 1984 whereby and where under the said learned Court held that the suit filed by the Plaintiff was maintainable.

2. The fact of the matter lies in a very narrow compass.

3. The Plaintiff-Appellant filed Title Suit No. 76 of 1984 on 11.8.1983 inter alia, for a declaration that the order passed by the Defendant/Respondent dismissing him from the services is illegal. In the said suit, the Defendants/Respondents appeared and filed their objection. The Defendant raised a preliminary objection with regard to the liability of the suit on the ground that the jurisdiction of the civil Court is barred under the provisions of Industrial Disputes Act, 1947.

4. By an order dated 13.8.1986, the learned trial Court decided the aforementioned preliminary issue holding therein that the suit filed by the Plaintiff was maintainable.

5. The Defendant against the aforementioned order dated 13.9.1986 preferred a Title Appeal in the Court of District Judge, Dhanbad which was registered as Title Appeal No. 66/86. After the said appeal was filed, it appears, a preliminary decree was drawn up on 1.7.1987 and the said appeal was admitted on

3.12.1987. By reason of the impugned judgment dated 2.6.88 the learned Court of appeal below allowed the said appeal by holding that the jurisdiction of the civil Court was barred under the provisions of Industrial Disputes Act.

6. In this second appeal, the only substantial question of law formulated is:

Whether in the facts and circumstances of this case, the appeal preferred by the Respondent before the Court of appeal below against the order dated 3.9.86 passed in Title Suit No. 76/84 was maintainable ?

7. Mr. Kalyan Roy learned Counsel appearing on behalf of the Appellant submitted that as by reason of the order dated 3.9.1986, the rights of the parties have not been finally decided, no appeal was maintainable and, thus the impugned order has been passed wholly without jurisdiction.

8. Learned Counsel in this connection has relied upon Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, and in Major S.S. Khanna Vs. Brig. F.J. Dillon, .

Learned Counsel further submitted that in view of the decision of the Supreme Court in Ram Kumar Vs. State of Haryana, , it must be held that the civil suit was maintainable.

9. Mr. Lahiri, learned Counsel appearing on behalf of the Respondents submitted that rightly or wrongly, a preliminary decree had been prepared and, thus, an appeal was maintainable. Learned Counsel further submitted that in any event, this Court should not exercise its jurisdiction nor the Respondents should suffer for a mistake committed by the Court. Learned Counsel in this connection has relied upon Oor Nayakkan alias Krishnaswami Naidu and Others Vs. Ps.Ar.Ar. Arunachala Chettiar, ; and in Parbati Pillai v. Kutan Pillai reported in, AIR 1962 Ker 17.

10. In terms of Section 96 of the Court of Civil Procedure, an appeal lies, inter alia, against a decree. Decree has been defined in Section 2(2) of the CPC 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 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.

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

11. Evidently, by reason of the order dated 3.9.1986, the trial Court merely

decided a preliminary issue in favour of the Plaintiff in terms of provisions contained under Order 14, Rule 2 of the Code of Civil Procedure. The said preliminary issue was also decided in favour of the Plaintiff and thereby it was merely held that the civil Court has the jurisdiction to entertain the suit filed by the Plaintiff.

12. The said order, therefore, did not fall within the purview of the definition of decree as contained in Section 2(2), of the Code of Civil Procedure.

13. In *Major S.S. Khanna Vs. Brig. F.J. Dillon*, however, it has been held that such an order amounts to a case decided within the meaning of section 115 of the CPC and, no revision lies against such an order. The Supreme Court has taken the same view in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*.

14. It is true as has been contended by At. K.K. Lahiri that a preliminary decree was drawn up, but, from the records it appears that the said appeal was filed against the order dated 3.9.1986 itself on the 10th of October, 1986.

15. The said appeal was not admitted and no decree was drawn up and it appears that on 22.12.1986, the Defendant/Appellant filed (sic) an application before the Court below praying that necessary orders for drawing up of preliminary decree be passed. The trial Court directed drawing of a preliminary decree in pursuance of the said application.

16. It appears from the records that on 2.4.1987 the said application was put up for hearing and the learned lawyer appearing for the Plaintiff did not oppose the same, in such situation, a preliminary decree was drawn up and as noticed hereinbefore, the appeal was admitted on 3.12.1987 subject to the consideration of the maintainability thereof at the time of final hearing.

17. Although the Plaintiff did not oppose the drawing up of a preliminary decree, evidently, no preliminary decree could be drawn up in terms of the aforementioned order dated 3.9.1986 as the rights of the parties had not been finally determined in as much as by reason thereof, it was merely held that the suit was maintainable. There are different provisions in the CPC itself, which provide for drawing up of a preliminary decree.

The case at hand does not fall within such cases wherein a preliminary decree could be drawn up.

In that view of the matter, evidently, the appeal preferred by the Defendant was not maintainable.

18. It is true that a mistake had been committed by the learned trial Court in drawing up of a preliminary decree but the Defendant/Respondent must also share the blame therefor inasmuch as it was on its application that a preliminary decree was drawn up.

19. Mr. Lahiri very fairly conceded that the appeal was not maintainable, but he

submitted that in the facts and circumstances of this case, particularly, in view of the decision of the Supreme Court of India that a civil suit will not lie, this Court should not interfere with the impugned judgment.

20. It is true that no party should suffer owing to mistake committed by the Court (*actus curiae neminem gravabit*). But it is also well known that the parties cannot confer jurisdiction upon a Court when it has none. Only in certain cases, where a Court can exercise its discretion it may refuse to give relief to the applicant in the event it is found that the setting aside of an order gives rise to *Anr.* illegal order and in such an event the Court which can exercise any discretion in such a matter, may refuse to exercise discretion or quash both the orders. This Court, however, is not exercising any discretionary jurisdiction. Further, there appears to be a conflict of decisions of the Supreme Court as to whether in such a case, a civil suit will be maintainable.

See *Jitendra Nath Biswas v. Empire of India and Ceylone Tea Co. and Anr.* reported in 1989 (3) SCC 582 on the one hand and in *Ram Kumar Vs. State of Haryana*, on the other.

Further, this Court is not called upon to decide the said question at this stage.

21. It is now well known that an order passed by a Court lacking inherent jurisdiction is a nullity. It is also well known that a right decision by a wrong forum is no decision.

See *Pandu Rang v. State of Maharashtra* reported in AIR 1987 SC 535.

22. In such a situation, in my opinion, this Court has no other option but to hold that the appeal preferred by the Defendant/ Respondent being Title Appeal No. 66 of 1986 was not maintainable.

23. In the result, this appeal is allowed and the judgment and decree passed by the learned Court of appeal below is set aside. However, as the judgment and decree passed by the learned Court of appeal below is set aside on the ground of its having no jurisdiction to entertain the same, the same will not operate as *res judicata* and, thus, it will be open to the Respondent to challenge the said order dated 3.9.1986 passed by the learned Munsif in the event the suit ultimately is decided in favour of the Plaintiff and against the Defendant.

In the facts and circumstances of this case, there will be no order as to costs.