

(1996) 09 MAD CK 0049
In the Madras High Court
Case No : C.R.P.S.R. No. 61701 of 1996

D. Ganesan and others

APPELLANT

Vs

M.S. Chandra Bose and another

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Companies Act, 1956 — Section 256
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1997 Mad 190 : (1999) 95 CompCas 88 : (1996) 2 CTC 490 :
(1996) 2 LW 479

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. Gandhi for R.C. Narendhiran, for the Appellant;

Judgement

1. Respondents 1, 3 and 4 in I. A. No. 480 of 1996 who are defendants 1, 3 and 4 in O.S. No. 158 of 1996 on the file of Subordinate Judge,

Tuticorin, are the petitioners in the above revision filed under Article 227 of the Constitution of India. The Court below at the instance of the

plaintiff, 1st respondent herein has granted injunction restraining the petitioners herein from taking part in any meeting including the meeting of the

Board of Directors pending disposal of the suit. The present revision was filed on 5-9-96. On the very same day the Registry, after processing the

papers since there is a provision for appeal against the order in I.A. No. 480 of 96 raised an objection regarding maintainability of the present

revision under Article 227 of the Constitution of India. At the request of the learned counsel for the petitioners, the matter has been listed for

hearing on 6-9-96 even without numbering the revision.

2. Mr. R. Gandhi, learned senior counsel appearing for the petitioners, at the

outset submits that in view of extra-ordinary urgency, namely, the meeting of the Board of Directors is being held on 6th and 7th of September, 1996 and in view of the absence of appellate Judge till 8-9-96, the petitioners have approached this Court under Article 227 of the Constitution of India. For filing the revision before this Court and by passing the appeal provision the learned senior counsel has raised the following submissions :--

(1) Even though there is effective appeal remedy, in view of urgency and of the facts and circumstances involved in the present case, this Court has ample power to entertain revision under Article 227 of the Constitution of India. For the above said proposition, he relied on the following decisions :--

- (i) Abanindra Kumar Maity Vs. A.K. Biswas, .
- (ii) Walaiti Ram Seth Vs. Krishan Kapoor and Others, .
- (iii) Bhagirath Singh Vs. The State of Punjab and Others, .
- (iv) Vasudeo Ganu Vartak Vs. Returning Officer and Others, .

(2) Even on merits because of the following irregularities, the petitioners are entitled to straightway approach this Court without resorting to filing appeal before the appellate Court.

(i) The plaintiff, who is only a shareholder, has filed the present suit without impleading the Bank, namely, Tamil Nadu Mercantile Bank Limited.

Hence, in the absence of Bank as a party to the suit, the suit as laid is not maintainable.

(ii) The plaintiff has not explained how he has aggrieved or prejudiced with regard to the continuance of defendants ! to 4 as Directors of the said Bank.

(iii) In view of various provisions under the Indian Companies Act, 1956, the Civil Court has no jurisdiction.

(iv) As per Section 256 of the Companies Act, the defendants are entitled to continue as Directors until the next general body meeting is convened.

3. In the light of the broad submissions made by the learned senior counsel, now it is useful to refer the factual aspects of the case. The plaintiff

calling himself as a share-holder and customer of the Tamil Nadu Mercantile Bank has filed the said suit O.S. 158 of 96 on the file of Subordinate

Judge, Tuticorin, for declaration to declare that defendants ceased to be Directors of the Tamil Nadu Mercantile Bank Limited on or from 1-4-95

and 31-12-95 and for consequential injunction restraining them from taking part in any board meeting as Directors and also any committee meeting

as well as any ad hoc committee of the Bank. He also filed I.A. No. 480 of 96 in the said suit for interim injunction restraining the respondents

therein (petitioners herein) from taking part in any meeting including the meeting of the Board of Directors, Committee meeting and ad hoc meeting

as Directors herein filed a counter-affidavit disputing the various averments made by the respondents herein. They have also raised the jurisdiction

of the Court as well as the locus standi or prejudice caused to the plaintiff.

In other words, according to them, the suit as laid by the plaintiff as well as the application for injunction are not maintainable and liable to be

dismissed. On the basis of the case of both sides, by order dated 3-9-96, the learned Subordinate Judge allowed I.A. No. 480 of 96 and made

injunction absolute till the disposal of the said suit. The said order is being challenged in the present revision.

4. In view of the doubt regarding the maintainability of the revision under Article 227, first I shall consider the argument relating to maintainability.

First of all, there is no dispute that against the order dated 3-9-96 an appeal lies to District Court. This has not been disputed by the learned senior

counsel. However, he points out that since the meetings of the Board of Directors are going to take place on 6th and 7th September, 1996 and in

view of the fact that the District Judge is on leave till 8th September, the petitioners are entitled to pursue their remedy before this Court by

invoking the provisions under Article 227 of the Constitution. In other words, the learned senior counsel vehemently contended that in spite of

effective alternative remedy, namely, appeal provision, the petitioners are entitled to approach this Court. For filing revision under the said

provision, he has also attacked the order of the learned Subordinate Judge as mentioned above. Since I propose to deal with the maintainability

aspect as a first issue, I am not going into the merits of the order of the learned Subordinate Judge. The first case relied on by the senior counsel is

Abanindra Kumar Maity Vs. A.K. Biswas, . A Division Bench of the Calcutta High Court while considering the power of the High Court under

Article 227 has expressed thus,

The existence of an alternative remedy, like a suit, does not preclude the High Court from exercising the powers under Art. 227 of the

Constitution of India, provided that alternative remedy is not a speedy or effective as an application under Art. 227.

5. The next decision cited by the learned senior counsel is Vasudeo Ganu Vartak Vs. Returning Officer and Others, . A Division Bench of the

Bombay High Court have explained the power of the High Court under Articles 226 and 227 of the Constitution of India in the light of existence of

alternative remedy in the following manner:--

The limitation that the High Court will not ordinarily issue a writ in favour of a person who has an adequate alternative remedy in a self-imposed

limitation, its reason being that the remedy by way of a writ is an extraordinary remedy. The normal rule, however, can be relaxed in appropriate

cases. Thus, where the petitioner who had an alternative remedy of appeal could not avail of it successfully as there was no designated authority

appointed to accept it within limitation, the High Court in the interest of justice would entertain the petition as one against the original order of the

Returning Officer rejecting his nomination paper.

6. The other decision referred to by the learned senior counsel is Bhagirath Singh Vs. The State of Punjab and Others, . Here also the Division

Bench of Punjab High Court has held that existence of an alternative remedy is not a per se constitutional bar to exercise the jurisdiction under

Article 226 as well as 227 of the Constitution. Finally, the learned senior counsel has referred to Walaiti Ram Seth Vs. Krishan Kapoor and

Others, . In the said decision, a single Judge of the Delhi High Court while construing the power of the High Court under Article 227 has observed

thus,

Even if the plaintiff omitted to file a revision or review against the order, the High Court can interfere under Art. 227 of the Constitution. It is a

settled law that the ambit of the power under Article 227 is so wide as to permit interference in cases where the ends of justice do require such a

course, even in cases where an appeal lay but was not filed, or an appeal had become barred by time. Even if a revision petition is not filed in time,

the same result must follow.

With these decisions, the learned senior counsel very much emphasizes that the petitioners are justified in approaching this Court.

7. No doubt, it is true that in the above referred decisions, various High Courts have held that the power under Article 227 is wide and in spite of

specific provision for appeal, it is open to the High Court to exercise the power under Article 227 of the Constitution. However, with regard to the

scope and power of the High Court under Article 227 there are number of judgments of the Apex Court directly on this point. Though the learned

senior counsel has not cited any decision of the Supreme Court at the bar since it relates to jurisdiction of this Court, I refer the following decisions

in order to solve the controversy:--

(1) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, ; (2) Bhutnath Chatterjee v. State

of West Bengal and Ors., (1969) 3 SCC 675 ; (3) AIR 1975 1297 (SC) ; (4) Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza, ;

(5) Mohd. Yunus Vs. Mohd. Mustaqim and Others, .

8. In the first case, namely, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , the

Constitutional Bench of the Supreme Court have explained the power of the High Court under Article 227 of the Constitution in the following

manner:--

The powers of judicial interference under Art. 227 with orders of judicial or quasi judicial nature are not greater than the powers under Art. 226.

Under Art. 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the

record. But under Art. 227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

9. In Bhutnath Chatterjee v. State of West Bengal and Ors., (1969) 3 SCC 675 , the Supreme Court has held,

The District Court held that compensation payable to the owners of land had to be determined on the basis of the market-value on the dates of

the notifications, dated November 2, 1956 and June 3, 1958 and not on the basis of the notification, dated January 12, 1955. To revise that

decision, jurisdiction of the High Court under Article 227 of the Constitution could not be exercised. Normally, the High Court exercises

jurisdiction under Article 227 of the Constitution to ensure that a Subordinate Court or Tribunal does not transgress the limits of its jurisdiction. The

jurisdiction with which the High Court is invested is not appellate; it cannot seek to correct what it regards as merely an error of law or fact.

10. In AIR 1975 1297 (SC) , a Bench consisting of three Judges have explained the scope and power of the High Court under Article 227 in the following manner:--

The power of superintendence of High Court under Art. 227 being extraordinary is to be exercised most sparingly and only in appropriate cases.

This power, as in the case of certiorari jurisdiction, cannot be invoked to correct an error of fact which only a superior Court can do in exercise of

its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Art. 227 convert itself into a Court of

appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts. The High

Court cannot, while exercising jurisdiction under Art. 227, interfere with findings of fact recorded by the subordinate Court or tribunal. It's function

is limited to seeing that the subordinate Court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by

examining the evidence and re-appreciating it.

11. In Miss Maneck Gustedji Burjarji Vs. Sarafazali Nawabali Mirza, , their Lordships have explained the interference of the High Court under

Article 227 in the following manner: --

Held that the respondent had clearly a legal remedy available to him by way of an appeal against the decree of the City Civil Court and that

remedy was not only adequate but was more comprehensive than the one under Art. 227 of the Constitution. It is true that, despite the existence of

an alternative, legal remedy, the High Court may interfere in favour of an applicant under Article 227 of the Constitution, but this was certainly not

one of such extraordinary cases. It was not proper for the High Court to entertain an application under Art. 227 against a decree passed by a

subordinate Court when the procedural law allows an appeal against it and that appeal lay to the High Court itself.

The jurisdiction under Art. 227 of the Constitution is an extraordinary jurisdiction which is to be exercised sparingly and in appropriate cases and

it is not to be exercised as if it were an appellate jurisdiction or as if it gave unfettered and unrestricted power to the High Court to do whatever it liked.

12. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, , the Apex Court has explained the power and scope under Article 227 in the following manner:--

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision.

13. In view of the law laid down by the Apex Court in the various decisions, I am unable to accept the contention of the learned senior counsel that this Court can entertain revision under Article 227 of the Constitution when there is a provision for appeal. I make it clear that it is settled that the power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only but includes the power of judicial revision also. This power involves a duty on the High Court to keep the inferior Courts and Tribunals within the grounds of their authority and to see that they do what their duty requires and that they do in a legal manner. But the said power does not vest with the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court. In view of various judicial pronouncement by the Apex Court with regard to the scope and power of this Court under Article 227 of the Constitution of India in the light of the admitted fact namely against the impugned order, an effective appeal provision is there, I am unable to accept the argument of the learned senior counsel. Considering the nature of the impugned order, the fact that appeal provision is there to the aggrieved parties and in view of the guidelines as formulated by the Apex Court, I hold that the present

revision under Art. 227 of the Constitution of India against the order granting injunction in I.A. 480 of 96 in O.S. No. 158 of 96 by the Sub-Court, Tuticorin, is not maintainable and liable to be rejected. In view of my conclusion on the maintainability. I am not expressing my view with regard to merits of the order passed by the learned Subordinate Judge. It is open to the petitioners herein to raise all these objections before the appellate Court, more particularly with regard to the "jurisdiction" of the Civil Court and the "prejudice" caused to the plaintiff. If such objections are made, it is needless to mention that the appellate Court is bound to consider the same. Accordingly, the C.R.P. SR. 61701 of 96 is rejected as not maintainable. The Registry is directed to return the certified copy of the impugned order to enable the petitioners to approach the appellate Court, if they are so advised.

14. Revision dismissed.