
(1996) 09 MAD CK 0047
In the Madras High Court
Case No : C.R.P. 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:

Companies Act, 1956 — Section 256
Constitution of India, 1950 — Article 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 the Appellant;

Judgement

Sathasivam J.

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

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-first 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 September 5, 1996. 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 1996, raised an objection regarding

the maintainability of the present revision under article 227 of the Constitution of India. At the request of learned counsel for the petitioners, the

matter has been listed for hearing on September 6, 1996, even without

numbering the revision.

2. Mr. R. Gandhi, learned senior counsel appearing for the petitioners, at the outset submits that in view of extraordinary urgency, namely, the

meeting of the board of directors is being held on September 6 and 7 of 1996, and in view of the absence of the appellate judge till September 8,

1996, the petitioners have approached this court under article 227 of the Constitution of India. For filing the revision before this court and

bypassing the appeal provision, the learned senior counsel has raised the following submissions :

1. Even though there is effective appeal remedy, in view of the urgency and of the facts and circumstances involved in the present case, this court

has ample power to entertain a 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 the merits because of the following irregularities, the petitioners are entitled to straightaway approach this court without resorting to filing

an 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 the bank as a party to the suit, the suit as laid is not maintainable.

(ii) The plaintiff has not explained how he was aggrieved or prejudiced with regard to the continuance of defendants Nos. 1 to 4 as directors of the

said bank.

(iii) In view of the various provisions under the 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 oral submissions made by learned senior counsel, now it is useful to refer to the factual aspects of the case. The plaintiff calling

himself a shareholder and customer of the Tamil Nadu Mercantile Bank Ltd. has filed the said suit O. S. No. 158 of 1996 on the file of the

Subordinate judge, Tuticorin, for a declaration to declare that the defendants ceased to be directors of the Tamil Nadu Mercantile Bank Limited

on or from April 1, 1995, and December 31, 1995, 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 1996 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 pending disposal of the suit. The petitioners 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 are liable to be dismissed. On the basis of the case of both sides, by order dated September 3, 1996, the learned Subordinate judge allowed

I.A. No. 480 of 1996 and made the 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 September 3, 1996, an appeal lies to the District Court. This has not been disputed by

learned senior counsel. However, he points out that since the meetings of the board of directors are going to take place on September 6 and 7,

1996, and in view of the fact that the District judge is on leave till September 8, the petitioners are entitled to pursue their remedy before this court

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

effective alternative remedy, namely, the appeal provision, the petitioners are entitled to approach this court. For filing a 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 (headnote) :

The existence of an alternative remedy, like a suit, does not preclude, the High Court from exercising the powers under article 227 of the Constitution of India, provided that alternative remedy is not as speedy or effective as an application under article 227.

5. The next decision cited by 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 (headnote) :

The limitation that the High Court will not ordinarily issue a writ in favour of a person who has an adequate alternative remedy is 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 learned senior counsel is Bhagirath Singh Vs. The State of Punjab and Others, Here also the Division Bench of

the Punjab High Court has held that existence of an alternative remedy is not per se a constitutional bar to exercise of jurisdiction under article 226

as well as article 227 of the Constitution. Finally, 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 (headnote)

:

Even if the plaintiff omitted to file a revision or review against the order, the High Court can interfere under article 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.

7. With these decisions, learned senior counsel very much emphasises that the petitioners are justified in approaching this court.

8. 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 a number of judgments of the apex court directly on this point. Though 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 to 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, .

9. 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 (headnote) :

The powers of judicial interference under article 227 with orders of judicial or quasi-judicial nature are not greater than the powers under article

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

the record. But under article 227, the power of interference is limited to seeing that the Tribunal functions within the limits of its authority.

10. 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, 1996, 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 the 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.

11. 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 (headnote) :

The power of superintendence of the High Court under article 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 the guise of exercising its jurisdiction under article 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 article 227, interfere with findings of fact recorded by the subordinate court or

tribunal. Its 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 reappreciating it.

12. 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 (headnote) :

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 article 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 article 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 article 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.

13. In Mohd. Yunus Vs. Mohd. Mustaqim and Others, , the apex court has explained the power and scope under article 227 in the following

manner (headnote) :

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under article 227. The supervisory

jurisdiction conferred on the High Courts under article 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 article 227, the High Court does not act as an appellate court or tribunal. It will not review or re-weigh 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.

14. 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 a 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 bounds of their

authority and to see that they do what their duty requires and that they do so in a legal manner). But the said power does not vest the High Court

with any unlimited prevarication to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the court. In view

of various judicial pronouncements 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 facts namely, that against the impugned order,

an effective appeal provision is there, I am unable to accept the argument of learned senior counsel. Considering the nature of the impugned order, the fact that the 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 article 227 of the Constitution of India against the order granting injunction in I.A. No. 480 of 1996 in O.S. No. 158 of 1996 by the Sub-Court, Tuticorin, is not maintainable and is liable to be rejected. In view of my conclusion on the maintainability, I am not expressing my view with regard to the merits of the order, passed by the learned Sub-ordinate 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) No. 61701 of 1996 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.