

(1972) 04 DEL CK 0009
In the Delhi High Court
Case No : First Appeal No. 239D of 1964

Delhi Transport Undertaking and Another	APPELLANT
Vs	
Kumari Lalita	RESPONDENT

Date of Decision : 17-04-1972

Acts Referred:

Citation : (1973) ACJ 137 : AIR 1972 Delhi 281 : (1972) 8 DLT 188 : (1972) 2 ILR Delhi 384

Hon'ble Judges : V.D. Misra, J;M.R.A Ansari, J

Bench : Division Bench

Advocate : R.L. Tandon and Y. Dayal, for the Appellant;

Judgement

V.D. Misra, J.

(1) Whether cross-objections are maintainable in a case where an appeal has been preferred under an Act which does not specifically provide for the filing of cross-objection" is the main question which has arisen for decision in the two appeals-F.A.O. No. 239-D of 1964 and F.A.O. No. 37 of 1971, which are being decided by this. judgment.

(2) The facts relating to F.A.O. No. 239-D of 1964 in brief are that Kumari Lalita was run over by a D.T.U. bus on 6-12-1961 and received serious injuries. According to the doctors, she was permanently disabled .She filed a claim for Rs. 1,00,000 u/s 110-A of the Motor Vehicles Act against the Delhi Transport Undertaking. The Tribunal awarded a sum of Rs. 12,000.00 to her. The Delhi Transport Undertaking filed the present appeal against the award. Kumari Lalita filed cross-objections and asked for enhancement of the compensation awarded by the Tribunal. During the course of arguments, Mr. R. L. Tandon, learned counsel for the appellant, raised and contention that no cross-objections were maintainable. His submission was that the award of the Tribunal did not amount to a decree and the provisions of Order 41 Rule 22 of the CPC had not been specifically made applicable and so no cross-objections could be preferred. The

award could not be treated as an order since it did not fall under the definition given in Section 2(14) of the Code of Civil Procedure. When this matter came up before one of us (v. D. Misra, J.), it was noticed that there "was a conflict of decisions and it was decided to refer the following question for the decision of a larger Bench :-

"WHETHER cross-objections are maintainable in .a case where an appeal has been preferred u/s I IO-A of the Motor Vehicles Act" against the award of the Motor Claims Tribunal?"

(3) In F.A.O. No. 37 of 1971 M/s. Banwari Lal and Sons (Pvt.) Ltd., filed an appeal against the award of the arbitrator under Sections 8 of the Requisitioning and Acquisition of Immovable Property Act. 1952. The Union of India, who is the first respondent in this appeal, filed cross-objections. The appellant objected to the maintainability of the cross-objections on the ground that the Act did not provide for the filing of the same. It was also contended that the principle underlying under Order 41 Rule 22 of the CPC would not enable the respondent to file cross-objections. When the matter came up before one of us (M.R.A. Ansari, J.), it was noticed that there was a conflict of decisions and it was decided to refer the matter to a larger Bench.

(4) The contention of the learned counsel for the respondents, who have filed cross-objections, is that when an appeal lies to the High Court from the decision of a Tribunal the proceedings are governed by the practice and procedure of the High Court. The High Court is a Court of Record to which the provisions of the CPC are applicable, and so the respondents can file cross-objections. On the other hand, the learned counsel for the appellants contend that the right of filing cross-objections is a substantive right which can be given by a statute only and is not a matter of procedure. Appeals from Tribunals lie to the High Court as persons designata, and in any case procedure of High Court gives no right of filing cross-objections. Reliance is also placed on an unreported Division Bench decision of Punjab High Court (Circuit Bench at Delhi) in Union of India v. Mauji Ram, F.A.O. No. 85-D of 1956, decided on 17-12-1965. (i).

(5) The relevant provisions of the Motor Vehicles Act and the Requisitioning and Acquisition of Immovable Property Act may be noticed. Sections 110 to 111-A were enacted by amendment in 1956 to the Motor Vehicles Act, 1939. Section 110 deals with the constitution of Motor Accidents Claims Tribunals for the purpose of adjudicating upon claims for compensation arising out of motor accidents. Section I IO-A lays down the period within which an application for compensation may be made to the Claims Tribunal having jurisdiction over the area within which the accident took place by the persons described in this Section. This application is to be in such form, and is to contain such particulars, as may be prescribed by the rules made under the Act. Section 110-B requires holding of an enquiry into the claim and making an award. Section 110-C provides for the procedure of the Tribunal subject to the rules which may be made and its powers. The procedure to be followed by the Claims Tribunals and

its powers are to be laid down by the rules to be framed by State Governments u/s 111-A. Delhi Motor Vehicles Rules, 1940, were amended by a notification dated 15-11-1960 u/s 111-A. New rules are 8.5 to 8.24. They lay down the procedure to be followed by the Claims Tribunal in entertaining applications for compensation and their disposal. Provision for examination of parties, summoning of witnesses, local inspection, recording evidence, framing of issues and their determination, judgment and award of compensation has been made. Some provisions of the CPC have been made applicable by rule 8.22. Section 110-D gives to any aggrieved person the right of appeal to the High Court against the award of a Tribunal, and is as under :-

"110-D.Appeal.-(1) Subject to the provisions of subsection (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court: Provided that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time. (2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees."

(6) Rule 8.23 only deals with appeals, and is as under :-

"8.23.Form and number of appeals against the decision of Claims Tribunal.- (1) An appeal against the award of a Claims Tribunal, shall be preferred in the form of a memorandum stating concisely the grounds on which the appeal is preferred. (2) It shall be accompanied by a copy of the judgment and the award appealed against."

(7) Section 110-F bars the jurisdiction of civil courts to entertain any question relating to any claim for compensation in an area for which Claims Tribunals have been constituted.

(8) The Requisitioning & Acquisition of Immovable Property Act, 1952, as its name suggests, provides for requisition and acquisition of immovable property by the competent authority for public purpose. The compensation is to be determined according to the principles and the manner laid down u/s 8. The amount of compensation may be fixed by agreement. If no such agreement can be reached, the Central Government is required to appoint an arbitrator in terms of clauses (b) or (c) of its sub-section (1). The parties are required to state before the commencement of the proceedings before the arbitrator what in their respective opinion is a fair amount of compensation (sub-clause (d)). The arbitrator after hearing the dispute is required to make an award determining the amount of compensation in terms of sub-clause (e). Sub-clause (g) provides that Arbitration Act shall not apply to arbitration under this section. Section 12 gives to the arbitrator all the powers of a civil court under the CPC in respect of specified matters only, namely, (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and

production of any document; (c) reception of evidence on affidavits; (d) requisitioning any public record from any Court or office; and (e) issuing commission for examination of witness. Section 19 bars the jurisdiction of civil courts in respect of any matter which the arbitrator is empowered to determine. Section 22 authorises the Central Government to make rules for the procedure to be followed in arbitration proceedings and appeals under the Act. Section 12 gives the right to any aggrieved person of filing an appeal to the High Court against the award of an arbitrator and is as under :

"11-APPEALS from awards in respect of compensation. Any person aggrieved by an award of the arbitrator made u/s 8 may, within thirty days from the date of such award prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate: Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

No rule regarding appeals seems to have been framed since none has been brought to our notice.

(9) It will be noticed that both the Acts create persona designates for deciding the disputes arising under the Acts and they derive their powers from them which lay down their respective procedure also. Specified provisions of the CPC have been extended, and the rest of its provisions are not applicable. Appeal is a creature of statute and if these Acts would not have specifically provided for appeals to the High Court, no appeal would have lain from the award. Provisions relating to appeals under the Acts show that in case the opposing parties are aggrieved by the award, both can prefer appeals. However, neither the Acts nor the rules made there under provide for the procedure to be followed in the appeals though procedure to be followed by designated persons is provided for. Whereas the sections provide for an appeal the relevant rule provides its form only by stating that it shall be preferred in the form of a memorandum stating concisely the grounds on which the appeal is preferred.

(10) The contention that provision of an appeal to the High Court against the decision of a persona designata in a statute will convert the High Court into a persona designata because appeal is a continuation of proceedings is not well founded and cannot be accepted. The High Court is a Court of record and has its procedure. The legislature knows about it and felt no necessity to change it. On the other hand, the persona designata, which was a creature of statute, had to be provided with a procedure.

(11) In *National Telephone Company Ltd. v. Post-master General* (1913) A.C. 546 Lord Parker observed thus :

" Whereby statute matters are referred to the determination of a Court of record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court. Its jurisdiction is enlarged, but all the

incidents of jurisdiction, including the right of appeal from its decision, remain the same."

(12) Viscount Haldane, L.C., at p. 552 observed thus :

" WHEN a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

(13) A Division Bench of the Calcutta High Court in Ramasray Singh and Others Vs. Bibhisn Sinha and Others, , relying on the observations of Viscount Haldane, L.C., held that the cross-objections were maintainable despite the fact that Section 38(3) of the Bengal Money-Lenders Act of 1940 did not provide for the same and observed thus :

" THE right of appeal, under that section, is given to an establishment Court, namely, the Court of the District Judge. Nothing is stated expressly in the sub-section as to the procedure regulating such appeal. In our view, where nothing is stated expressly as to the procedure of an appeal before a District Judge, the law will import that the ordinary procedure of that Court on appeal will apply. The ordinary procedure on an appeal is that the respondent has the right to file cross objection and Therefore it is quite clear that the respondent has the right to file a cross-objection."

(14) Their Lordships of the Supreme Court in South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others, , quoted with approval their following observations in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), :

" OBVIOUSLY after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction The rule is well settled that when a statute directs that an appeal shall lie to a Court already established then the appeal must be regulated by the practice and procedure of that Court."

(15) After referring to various decisions of the Judicial Committee with approval, including the case of National Telephone Co., Ltd. (supra) (2). it was observed thus :

" THE following legal position emerges from the said discussion. A statute may give a right of appeal from an order of a Tribunal or a Court to the High Court without any limitation thereof. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court."

(16) In Collector of Varanasi Vs. Gauri Shankar Misra and Others, , the import of Section 19(1) (f) of the defense of India Act, 1939, which is as follows :-

" AN appeal shall lie to the High Court against an award of an arbitrator excepting in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government"

was considered, and their Lordships of the Supreme Court observed thus:

" WE were informed that neither the Act nor the rules framed there under, prescribed any special procedure for the disposal of appeals u/s 19(1)(f). Appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. Obviously after the appeal had reached the High Court, it had to be determined according to the rules of practice and procedure of that Court. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court."

It was also observed:

" THE fact that the arbitrator appointed u/s 19(1)(b) is either a designated person or a Tribunal-as to whether he is a person designated or a Tribunal we express no opinion-does not in any way bear on the question whether the "High Court" referred to u/s 19(1)(f) is a Court or not. Our statutes are full of instances where appeals or revisions to Courts are provided as against the decisions of designated person and tribunals."

(17) The earlier decision of the Supreme Court in *Hanskumar Kishanchand Vs. The Union of India (UOI)*, , holding that an appeal to the High Court u/s 19(1)(f), defense of India Act, 1939, against the decision of a persona designata is to be "construed" as a reference to it as an authority designated and not as a Court" since appeal is a continuation of a proceedings, is no longer good law in view of *Gauri Shanker case (supra)* .(6) The Division Bench (supra) (1) had based its decision on *Hanskumar Kishanchand case*(7), since the relevant provisions of the requisitioning and Acquisition Act, 1952. are an exact parallel to those of Section 19 of the defense of India Act, 1939, for coming to the conclusion that appeal to the High Court u/s 19 of the former Act lay to it as an authority designated and not a Court. In view of *Gauri Shanker's*(6) case (supra), *Mauji Ram's case*(1) cannot be held to be laying down the correct law.

(18) A Full Bench of this Court in the *Municipal Corporation of Delhi Vs. Kuldip Lal Bhandari and Others*, , considered the import of Section 110-D of the Motor Vehicles Act, and observed thus:

" AS already stated above, the claim for compensation caused by negligence is well-known to the law of torts, as a part of common law independent of any statute. The claim not being a creation of any particular statute it would be reasonable to suppose that the provisions of the Motor Vehicles (Amendment) Act, 1956 were intended only to expedite the trial of such a claim by the establishment of Claims Tribunal The statute did not otherwise intend to cut down or modify or change in any way, the common law right. Section 110-F

barred the jurisdiction of Civil Courts only to entertain the original claim as a trial Court. This bar operated only when in the particular area the Claims Tribunal had been established. In the other areas, the Civil Courts continue to entertain such a claim. The appeal to the High Court u/s 110-D of the Act enables the High Court to consider the claim in its entirety free from any limitations in the same way as the High Court would consider the claim in an appeal from a Civil Court from an area in which a Claims Tribunal has not been established."

It was further observed : in hearing the appeal u/s 110-D of the Act, the High Court must be held to be acting as a High Court and not as a Tribunal, inasmuch as the claim for compensation for negligence is a common law right not as created by a statute and the claim is considered by the Tribunal in its entirety without limitation with the result that an appeal to the High Court is made in its ordinary Civil Jurisdiction "

(19) The CPC is an Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature and is applicable to High Courts (Section 117). High Courts can make rules regulating their own procedure (Section 122) as long as these are not inconsistent with the provisions in the body of the Code (Section 128). "The provisions of Order 41 of the Code would thus apply to the appeals which come to the High Courts unless the statute providing for the appeals provides to the contrary. The contention of Mr. R. M. Lal, learned counsel for the appellant, that this approach would mean that any aggrieved person by a decision of a Tribunal would have the right to appeal to the High Court u/s 96 of the Code is misconceived. The jurisdiction of the High Court to hear an appeal arises out of a statute and it becomes seized of an appeal only after an appeal has been preferred. It is thereafter that procedure contained in Order 41 of the Code becomes applicable.

(20) Another contention raised by the appellants is that even if Order 41 of the Code is applicable, Rule 22 of this Order should not be held applicable since it is not procedural but gives a substantive right. It is also contended that the impugned awards neither amount to a decree, nor an order in terms of the Code and so no cross objection can be filed. Admittedly, the right of appeal given to any aggrieved person against a decision can result in appeals by the opposing parties. These would be what are known as cross appeals. However, where a party decides not to file an appeal but the opposing party files an appeal, the former is given another opportunity to exercise his existing right of appeal b)y Rule 22. This rule does not give a right to the respondent. Indeed unless the respondent was entitled to appeal, he has no right to take any cross objection. In cross objections he can take only those which he could have taken by way of his right of appeal. These have to be in the form of a memorandum like an appeal, and may be heard and determined even if original appeal is withdrawn or is dismissed for default. All this shows that there is no material difference between a cross appeal and cross objection except the stage of the proceedings. Filing of cross objection by a respondent is thus only a matter of procedure and not of

substantive law. A Full Bench of the Madras High Court in *A.L.A. Alagappa Chettiar v. Chockalingam Chetty and others*, Air 1919 Mad 784, Sadasiva Aiyar, J., following a Division Bench decision of the Bombay High Court in *Raghunathdas Gopaldas v. Secretary of State* (1905) 29 Bom 514 held that every party to the insolvency proceeding is given the substantial right of appeal (just as every aggrieved party is given a right of appeal under sections 96, 97, 100 CPC .) and that the respondent (who as a party has such a right of appeal) is merely allowed to avail himself of an additional rule of procedure by way of a memorandum of objections as provided for in Order 41 Rule 22 in exercise of his said right of appeal. Similar was the view in *Jaikrishna Vishwanath v. Sawatram Ramprasad Shop* Air 1940 Nag 291.

(21) In *Inayatullah Khan Vs. Diwanchand Mahajan and Others*, , M. Hidayatullah, C.J. (later on the Chief Justice of India), speaking for the Bench, after following *Ramasray Singh* (Supra) and various other decisions, observed thus :

" THERE is thus authority for the proposition that a cross objection may be filed where an appeal lies and has to be disposed of in accordance with the Code of Civil Procedure, even though there may be no express provision to confer the right of filling a cross-objection."

(22) A Division Bench of the Lahore High Court in *Lala Khazanchi Shah v. Haji Niaz Ali*, Air 1940 Lahore 438(13), held that Order 41 of the CPC would apply to Letters Patent Appeals and that in general there was no difference between the Procedure in Letters Patent Appeals and ordinary appeals so far as the CPC was concerned, and so cross-objections were maintainable.

(23) In *Jawahar Singh v. Jai Gopal*, 1972 F.C.R. 242(14), v. S. Deshpande, J., while considering the question of maintainability of cross-objections in an appeal filed u/s 39 of the Delhi Rent -Control Act, 1958, observed thus:

"Asecond appeal against the decision of the Tribunal lies to the High Court u/s 39 of the Act. Neither section 39 nor any other provision of the Act framed or the rules framed there under, however, makes any provision about the procedure to be followed by the High Court in dealing with the second appeal. The reason for this silence of the Act and the Rules is obvious. The Controller and the Rent Control Tribunal are authorities created by the Act. The procedure to be followed by them had, Therefore, to be specified by the Act and the rules framed there under. But the High Court exists as a Court of record independently of the Act. The second appeal u/s 39 of the Act lies to the High Court in its capacity as a pre-existing Court. The intention, Therefore, is that the procedure for dealing with the second appeal is left to be determined by the High Court."

(24) Following the case of *Municipal Corporation of Delhi* (supra) (8), it was further observed:

" THE above reasons would show that the right to file cross-objections is included in the right of appeal given by section 39 and also in the procedure to be

followed by the High Court apart from section 39 of the Act and the Rules framed there under."

(25) In *Sahadu Gangaram Bhagade Vs. Special Deputy Collector, Ahmednagar and Another*, , while deciding the court fee payable under the relevant provisions of the Bombay Court Fees, Act, 1959 on the cross-objection filed in an appeal filed u/s 12 of the Requisitioning & Acquisition of Immovable Property Act, 1952, it was observed thus :

" THE question is whether a cross-objection filed by a respondent in an appeal can be considered as a memorandum of appeal. We have no doubt that it is a memorandum of appeal in substance though not in form. It is a right given to a respondent in appeal to challenge the order under appeal to the extent he is aggrieved by that order. The memorandum of cross-objection is but one form of appeal. It takes the place of a cross-appeal."

(26) A Division Bench of the Madhya Pradesh High Court in *Manjula Devi Bhuta and another v. Manjusri Raha and others*, 1968 A.C.J. 1(16); observed thus :

"The Raha as have preferred cross-objections under Order 41 Rule 22, Civil Procedure Code. Mr. Tankha for the proprietor of the Speedways bus contends that the cross-objections are not tenable because these appeals are not under the Code of Civil Procedure. We are of the opinion that as soon as this Court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute, the rules of practice and procedure of this Court applicable to a civil appeal will, in the absence of any specific rule to the contrary govern such appeal. *Secretary of State for India, v. Chelikani Rama.Rao* Air 1916 P.C. 2117 was a case where an appeal lay to the District Court under the Madras Forest Act (V of 1882). The Privy Council observed thus :"

" WHAT happened in the present case was that the claim was rejected. An appeal by the respondents was thereupon made to the District Court, and a decision was pronounced. It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the ordinary rules of the CPC apply".

(27) These observations were relied on by the Supreme Court in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, . In that case, an appeal was preferred to the High Court of Bombay u/s 76 of Trade Marks Act. The question was whether a further appeal lay to the High Court under its Letters Patent. The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of such an appeal in the High Court. Their Lordships laid down thus :-

" OBVIOUSLY after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court".

(28) Mr. Tankha relied on Rule 14 of the Madhya Pradesh Motor Accidents Claims Tribunal Rules, 1958. That rule makes certain other provisions of the CPC applicable to proceedings before the Claims Tribunal. But the very language of that rule shows that it is not exhaustive and it does not contain anything which is contrary to the rules of practice and procedure, which generally govern a civil appeal in this Court.

(29) One of us (M.R.A. Ansari, J.) following the above decision in W.S. Bhagsingh and Sons and Another Vs. Om Parkash Kaith and Another, observed thus :

" THE learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the cross-objection filed by the petitioners. The learned counsel contends that the Act is self-contained and it did not provide for the filing of any cross-objection. In reply the learned counsel for the petitioners contends that where the Act is silent, the provisions of the CPC would apply and that under the said Code where one party files an appeal, the opposite party is at liberty to file cross-objections. In support of this contention the learned counsel for the petitioners has referred to a decision of the Madhya Pradesh High Court in Manjula Devi Bhutta and another v. Manjusri Raha and others"), wherein it was held that "as soon as this Court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute, the rules of practice and procedure of this Court applicable to a civil appeal will, in the absence of any specific rule to the contrary, govern such appeal". In support of this view their Lordships of the Madhya Pradesh High Court have referred to a decision of the Privy Council in Rao and also to a decision of the Supreme Court in N.S. Thread Co. v. James Chadwick and Bros. (5) The learned counsel for the respondents has not been able to cite any decision contra to the one cited by the learned counsel for the petitioners and which would support his own contention. The practice in this Court also appears to permit the filing of cross-objection when appeals are filed against judgment of the Tribunal. I, Therefore, hold that the cross-objections filed by the petitioners are maintainable."

Thus there is overwhelming authority to hold that cross-objection is not a substantive right given by Order 41, Rule 22 of the Code but is only procedural taking place of cross appeal.

(30) The other contention of the learned counsel for the appellants that the Order 41, Rule 22 of the CPC would not apply since award is neither a decree nor an order is not well founded. The fact that the impugned awards are neither decrees nor orders in terms of the CPC Code (which is not being decided by us) makes no difference. The awards have been made appealable and the procedure

applicable is that of Order 41, Civil Procedure Code. The word "decree" used in Rule 22 in these circumstances have to be read as "award" in order to give effect to this order. It is in this fashion that Order 41, Rule 22 is read when an appeal is preferred against an order made appealable under Order 43, Rule I of the CPC and Rule 2 thereof makes Order 41 applicable.

(31) The other decisions relied upon by the learned counsel taking opposite views may now be noticed. A Division Bench of Patna High Court in Bokaro and Ramgur Ltd. and Others Vs. Kathara Coal Co. Ltd. and Others, , came to the conclusion that cross-objection filed by the respondent in appeal u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act 1957, were not maintainable on the following reasoning:

" EXCEPT Section 20 of the Act there is no other Section under which a person aggrieved by any award of a Tribunal constituted u/s 14(2) of the Act can come up to the High Court and Section 20 specifically provides for an appeal to the High Court by a person aggrieved by the award of such a Tribunal, in other words, under the Act no right to file a cross-objection appears to have been granted. There is no provision in the Act analogous to those of Order 41, Rule 22 of the Code of Civil Procedure. Right of cross-objection like a right of appeal is a creature of statute.... The only manner in which that determination by the Tribunal, viz., its award can be subjected to a review is by appealing against the whole or part of it u/s 20. Cross-objection is thus ruled out."

This decision does not refer to any judgment in support of its view. Moreover none of the questions raised before us and discussed above has been discussed.

(32) A division Bench of the Allahabad High Court in Zahid Hussain Vs. B. Khairati Lal Jain and Others, held that cross-objections were not tenable in an appeal filed u/s 75 of the Provisional Insolvency Act of 1920, on the following reasons :-

"SECTION 75 of the Insolvency Act provides for an appeal within 30 days to the District Court and within 90 days to the High Court. There is no "provision for a cross-objection to be filed within 30 days after service of notice as under Order Xli Rule 22 of the Civil Procedure Code. So far as we see there is nothing in the Provincial Insolvency Act making the provisions of Order Xli, Rule 22, Civil P.C., applicable to an appeal under S. 75."

(33) This case also does not take note of the various aspects discussed by us. Even the Full Bench decision of the Madras High Court in A.L.A. Algappa Chettiar case (supre)(") and Division Bench decision of the Bombay High Court in Raghunathdas Gopaldas case (supre)(10) have not been taken note of. With great respect to the learned Judges, we do not agree with them.

(34) The result is that we hold that cross-objections filed in the present appeals by the respondents are maintainable. The appeals will now go back before a Single Bench for decision on merits.

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