

(2008) 01 BOM CK 0009
In the Bombay High Court
Case No : F.A. No. 2457 of 2007

Employees State Insurance Corporation APPELLANT
Vs
Force Motors Ltd. RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75, 75(2B), 82
Limitation Act, 1963 — Section 12, 5
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20(1)

Citation : (2008) 118 FLR 526 : (2008) 3 LLJ 81 : (2008) 4 MhLj 120

Hon'ble Judges : Abhay S. Oka, J

Bench : Single Bench

Advocate : P.M. Palshikar, for the Appellant; Sanjay Londhe, instructed by Sanjay Udeshi, for the Respondent

Final Decision : Dismissed

Judgement

Abhay S. Oka, J.—I have heard the submissions of the learned Counsel appearing for the parties. The challenge in this Appeal is to the Judgment and Order dated 4th October, 2006 passed by the learned Judge of the Employees' Insurance Court.

2. The respondent filed an application u/s 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the said Act of 1948") challenging an order dated 28th September, 1983 passed by the appellant in exercise of powers u/s 45A of the said Act of 1948 by which a demand of Rs. 2,20,249.60 was made by the appellant towards the contribution. The said application u/s 75 was dismissed on 29th January, 1990. An Appeal preferred against the said order by the respondent was dismissed by this Court. The respondent therefore paid the amount of Rs. 2,20,250/-. By an order dated 14th August, 2006, the appellant made a demand of Rs. 5,93,427/- being the interest payable on the sum of Rs. 2,20,249.60. Another application u/s 75 of the said Act of 1948 was filed by the respondent for challenging the demand made by the said order dated 14th

August, 2006. The respondent made an application at Exhibit "C-2" in the main Application u/s 75 praying for stay of operation of the order dated 14th August, 2006. On the said Application, the learned Judge granted ad-interim stay. Another application was made at Exhibit "C-3" by the respondent praying for waiver of the deposit 50% of the amount as required by Sub-section (2B) of Section 75 of the said Act of 1948. By the impugned Judgment and Order dated 4th October, 2006, the learned Trial Judge confirmed ad-interim stay granted to the operation of order dated 14th August, 2006 till the decision of the main application u/s 75 of the said Act of 1948. By the impugned order, it was held that the respondent was entitled to waiver of deposit of 50% of the amount of demand.

3. At the time of hearing of this Appeal, an objection was raised regarding maintainability of the Appeal. The submission of the learned Counsel appearing for the appellant is that an Appeal was maintainable u/s 82 of the said Act of 1948 against every order passed by the learned Judge of the Employees" Insurance Court. He submitted that Appeal lies to this Court against every order of the said Court if it involves a substantial question of law. He submitted that the impugned order granting waiver and granting stay to the order of demand is clearly illegal and the Appeal raises substantial question of law.

4. The learned Counsel appearing for the respondent submitted that an Appeal will lie against an order passed by the learned Judge of the Employees" State Insurance Court provided the order was in the nature of a decree. He placed reliance on a decision of the learned Single Judge of this Court in the case of Abdul Shakur Umar Sahigara and Co. Vs. Regional Director, Employees State Insurance Corporation, . He submitted that the order impugned is an interlocutory order which will operate only till the disposal of the main application u/s 75 and therefore Appeal will not lie against the said order.

5. By way of reply, the learned Counsel appearing for the appellant placed reliance on a decision of the learned Single Judge of Allahabad High Court in the case of Modi Steels Unit-A v. Employees" State Insurance Court (S.D.M.) Ghaziabad and Ors. 1985 L.I.C. 28. He submitted that the view taken by the Allahabad High Court is that Section 82 does not limit the right of Appeal to the orders finally disposing of the application u/s 75. He submitted that an order granting or refusing to grant interim relief is also an appealable order u/s 82.

6. I have given careful consideration to the submissions made by the learned Counsel appearing for the parties. The only issue to be decided is whether the order impugned is an appealable order u/s 82 of the said Act of 1948 considering the nature of the order.

7. Section 82 of the said Act of 1948 reads thus:

82. Appeal - (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees" Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of Sections 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this section.

8. The learned Single Judge of this Court in the case of Abdul Shakur Umar Sahigara and Co. (supra) had an occasion to consider the scope of Appeal provided u/s 82 of the said Act of 1948. In paragraph No. 23 of the said decision, the learned Single Judge has held as under:

With the above understanding, if one examines the impugned order passed by the E.I. Court, it will be clear that the E.I. Court has merely refused to summon the witness as a Court witness. If one were to ask the question, has the said impugned order adjudicated upon or determined any of the rights and/or obligations of any of the parties to the proceedings?", the answer has to be in negative. It can hardly be said to be an order determining the rights and/or obligations of any of the rival parties. Such order, in my opinion, is not open to challenge in an appeal filed u/s 82 of the Act. The appeal, therefore, is liable to be dismissed on this short count as not maintainable since impugned order does not have a status which can be equated with that of a decree passed in a suit by a Civil Court nor it has a force of a decree as understood in law (see Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . It has neither adjudicated any of the rights of the parties nor it is enforceable as if it is a decree passed in a suit by a Civil Court. The order in question is not a final and conclusive, in the sense that the Court can always summon any witness at any time in the interest of justice. Appeal u/s 82 of the Act is thus tenable only against the order which has trappings or flavour of a decree as discussed hereinabove.

(Emphasis added).

9. The view taken by the learned Single Judge is that unless the order of the Employees' State Insurance Court determines the rights and/or obligations of any of the rival parties, the said order is not an appealable order u/s 82 of the said Act of 1948. The learned Single Judge held that an Appeal u/s 82 of the said Act is tenable only against an order which has trappings or flavour of a decree. The submission of the learned Counsel for the appellant was that the Section 82 provides for an Appeal against all the orders and the section does not provide that an interlocutory order cannot be appealed against.

10-11. The Apex Court in the case of Central Bank of India Vs. Shri Gokal Chand, had an occasion to consider provisions of Section 38 of the Delhi Rent Control Act which provides for an Appeal from every order of the Controller. Relevant part of the decision of the Apex Court reads thus:

An appeal shall lie from every order of the Controller made under this act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one

person only to be appointed by the Central Government by notification in the Official Gazette.

(3) The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceedings, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed u/s 37(2) is an order passed under the Act and is subject to appeal u/s 38(1) provided it affects some right or liability of any party.

(Emphasis supplied).

12. The Division Bench of this Court in the case of Central Bank of India Vs. Shri Kurian Babu and Others, dealt with provisions of Section 20(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which provides for an Appeal against an order made by a Tribunal constituted under the said Act. In paragraph No. 8 of the said decision, the Apex Court held thus:

8. The observations of the Supreme Court in the aforesaid judgments would equally govern the relevant words used in Section 20(1) of the Act. The rights and liabilities of the parties would be normally decided by the final order. Very rarely the interlocutory order on procedural matter would affect the rights of the parties. The course of a litigation should normally proceed unhampered. If at every stage the Appellate Court has to entertain an appeal there cannot be a speedy culmination of the litigation at all. It is with a view to expedite the trial and conclusion of a litigation before the original authority or Court, the Supreme Court has limited the scope of the appellate jurisdiction in the manner stated in Central Bank's case. Therefore, we have no hesitation to hold that purely procedural orders which do not affect the substantive right of the parties are not appealable u/s 20(1) of the Act.

13. There is no reason why an interpretation put by the Apex Court and Division

Bench of this Court should not apply to the provision of Appeal u/s 82 of the said Act of 1948. An Appeal u/s 82 will not lie against a procedural order or an interlocutory order which does not finally decide the rights or liabilities of the parties. The view of Allahabad High Court referred to above is not correct. By the impugned Judgment and Order in the present case, there is no final adjudication on the rights and liabilities of the parties. The impugned order stays the recovery of amount only till the final disposal of the Application u/s 75 and dispenses with the requirement of deposit of 50% of the amount demanded. The order makes no adjudication as regards rights and liabilities of the parties. The order impugned does not satisfy the tests laid down by the learned Single Judge of this Court in the case of Abdul Shakur Umar Sahigara and Co. (supra).

14. Therefore, an inevitable conclusion is that the present Appeal is not maintainable. It must be however clarified that I have not dealt with the merits of the impugned order and notwithstanding the dismissal of the Appeal, it will be open for the appellant to file appropriate proceedings for challenging the impugned Judgment.

15. Hence, I pass the following order:

ORDER

The Appeal is dismissed as not maintainable. However, it will be open for the appellant to adopt appropriate proceedings for challenging the impugned Judgment and Order in accordance with law.