

(2016) 04 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition Nos.1620 and 1622 of 2015

Ghanshyam Jaju

APPELLANT

Vs

Assistant Commissioner, Endowments Department,
Nizamabad and another

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Citation : (2016) 5 ALT 331 : (2016) 4 AndhLD 330

Hon'ble Judges : A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri K. Durga Prasad, Advocate, for the Appellant;

Final Decision : Disposed Off

Judgement

A. Ramalingeswara Rao, J.—These two Civil Revision Petitions raise same point of law and hence they are being disposed of by this common order.

2. CRP No.1620 of 2015 arises out of an order dated 12.02.2015 in IA No.1991 of 2014 in OA No.945 of 2013 pending before the Andhra Pradesh Endowments Tribunal at Hyderabad and CRP No.1622 of 2015 arises out of an order dated 12.02.2015 in IA No.1990 of 2014 in OA No.944 of 2013 pending before the same Tribunal.

3. The petitioners in these two Civil Revision Petitions are the tenants, whereas the respondents are the landlords. The respondents filed the Original Applications seeking a declaration that the petitioners are encroachers and sought their eviction from the petition schedule premises.

4. The petitioners herein filed their counters to the said applications and also filed the interlocutory applications under Order 7 Rule 11 CPC praying the Tribunal to reject the Original Applications for their eviction from the petition schedule premises. In support of their applications they have stated that they are not encroachers but tenants for more than 60 years and no cause of action arose between them and respondents. A counter was filed by the original

applicants stating that the Original Applications were filed indicating the proper cause of action and the petitioners herein come under the definition of "encroachers" as defined under explanation to Section 83(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for brevity "the Act").

5. The Tribunal considered the applications, the counter filed by the parties and held that in view of the details given in the Original Applications, the present applications filed by the tenants cannot be entertained. Accordingly it dismissed the applications by separate orders dated 12.02.2015. Challenging the said orders, the present Civil Revision Petitions are filed.

6. The relevant observations of the Tribunal in dismissing the applications are as follows.

"It is clear from the above averments that the material facts as stated supra attracting the provision of law laid down under Section 83(1) are mentioned in the Original Application. The remaining submissions made on behalf of the petitioner by his counsel will not in any way affect the result of the application. However, I am considering those submissions. There is no dispute that the date of encroachment or the date of knowledge as to the encroachment is not mentioned in the Original Application. As per Order 7 Rule 11(a), the plaint shall be rejected where it does not disclose a cause of action, but the said rule does not contain any words to indicate that the plaint shall be rejected on the ground that the date as to when the cause of action arose is not mentioned in the plaint/OA. As per Order 7 Rule 1(e) CPC, the fact "when the cause of action arose" is to be mentioned in the plaint. That fact is to be mentioned as the law of limitation is applicable in suits, but, in the Original Application filed U/s.83 of the Act, 30/87, the above fact is immaterial as the law of limitation is not applicable. Apart from it, the rules framed under the Act, 30/87, do not contain any words to indicate that the above fact is to be mentioned in the OA. Rule 6(2) of A.P. Charitable and Hindu Religious Institutions and Endowments Tribunal Rules 2010 does not say that the Original Application shall state when the cause of action arose like in the plaint. The 2nd applicant in the Original Application, who is the Single Trustee-cum-Founder Family Member and who is shown as the 2nd respondent in the interlocutory application, filed counter in the interlocutory application. I am unable to appreciate the argument of the petitioner's counsel on the above aspect. The counsel for the petitioner did not make any submission contra to the submission made by the respondents' counsel touching the provision of law laid down U/s.15 of the Act, 30/87. However, it is not a ground to reject the Original Application.

Therefore, I find no merit in the submissions made by the petitioner's counsel supporting his case that the OA is liable to be rejected as per Order 7, Rule 11(a) CPC as the averments made in the OA do not disclose a cause of action. For the above reasons, I am of the view that this Application is liable to be dismissed. This point is thus answered."

7. In the light of the above issue raised by the petitioners in the present applications filed before the Tribunal, it has to be seen whether the provisions of the Code of Civil Procedure in to to are applicable to the Original Applications filed before the Tribunal or not and whether the applications filed by the tenants can be entertained by the Tribunal.

8. Section 87 of the Act deals with the jurisdiction of the Endowments Tribunal. Section 88 thereof provides for a right of appeal to the High Court. Section 149 deals with the procedure and powers at enquiries before the Commissioner, Additional Commissioner or Regional Joint Commissioner, a Deputy Commissioner or Assistant Commissioner and it says that they shall be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits or the hearing of appeals as the case may be. It was also held that the provisions of the Indian Evidence Act, 1872 and the Indian Oaths Act, 1969, shall, so far as may be, apply to such inquiries and appeals. Section 153 of the Act enables the Government for framing Rules. The Endowments Tribunal was constituted under Section 162 of the Act.

9. Admittedly, the Original Applications were filed under Section 83 of the Act. In exercise of the powers conferred by sub-section (1) of Section 153 read with sub-section (6) of Section 162 of the Act, "the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Tribunal Rules, 2010" were framed. They are applicable to the proceedings before the Tribunal. They contain the procedure for filing the application before the Tribunal and the relevant portion of the rules for application is provided in Sub-Rule (2) of Rule 6 and it reads as follows.

"6. Procedure for filing the application:

(1) ??????????

(2) the report or the application shall, as far as practicable, be filled in the form of a plaint as per Code of Civil Procedure and the Rules made thereunder. It shall be headed with a Cause-title, the names and addresses of Applicants and the Respondents for service, the provision of law under which the report or the application is filed, a brief statement setting out the case clearly and precisely in distinct paragraphs, the relief sought for, the facts constituting the cause of action, Jurisdiction and the description of the property sufficient to identify and shall be verified at the foot in the manner provided for verification of the plaint in the Code of Civil Procedure, 1908."

10. The Rules further deal with the filing of vakalats, number of copies of applications to be filed, filing of documents and relevant court fee as prescribed. Rule 7 deals with the procedure on presentation of the report or application. Rule 8 deals with appearance of respondents and Rule 9 deals with the amendment of pleadings. Rule 10 deals with the addition of legal representatives and Rule 11 deals with dismissal for default and ex parte decree. There are other provisions dealing with the framing of issues, recording of evidence and pronouncement of orders. Rule 26 says that the proceedings before the Tribunal are deemed to be

judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and it is deemed as a Civil Court for the purpose of Section 195 of Chapter XXVI of the Code of Criminal Procedure, 1973. Separate provision is provided for maintenance of registers. Thus, the Rules are self contained and they deal with the procedure to be followed by the Tribunal in dealing with the report or applications filed before it including the interlocutory applications.

11. A perusal of the Rules would indicate that there is no reference with regard to application of the Code of Civil Procedure for proceedings before the Tribunal. In view of the Rules, now it has to be seen whether the present applications under Order 7 Rule 11 CPC or such similar applications de hors the Rules, but under the provisions of Code of Civil Procedure, can be entertained by the Tribunal.

12. The Endowments Tribunal is constituted under Section 162 of the Act. Thus, when it is a statutory Tribunal it is not bound by the rules of evidence and it has to follow the procedure provided in the Rules.

13. Since, in the present case, we are concerned with the provisions of Order 7 Rule 11 CPC, we have to examine whether the provisions of Code of Civil Procedure are applicable to such domestic Tribunals. The Code of Civil Procedure applies to Courts which try suits and proceedings of a civil nature, but the procedure does not affect any special form of procedure prescribed by any law as held in *Mt. Sabitri Thakurain v. Savi and another*, AIR 1921 PC 80. In *Official Trustee, West Bengal v. Sachindra Nath Chatterjee*, AIR 1969 SC 823, the Hon'ble Supreme Court approved the meaning given to the expression "jurisdiction" by Justice Mookerjee in *Hriday Nath Roy v. Ram Chandra Barna Sarma*, AIR 1921 Calcutta 34, which is as follows.

"In the order of Reference to a Full Bench in the case of *Sukhlal v. Tara Chand*, ILR (1905) 33 Cal.68 it was stated that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it : in other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. An examination of the cases in the books discloses numerous attempts to define the term "jurisdiction", which has been stated to be "the power to hear and determine issues of law and fact", "the authority by which the judicial officer take cognizance of and "decide causes"; "the authority to hear and decide a legal controversy", "the power to hear and determine the subject matter in controversy between parties to a suit and to adjudicate or exercise any judicial power over them;" "the power to hear, determine and pronounce judgment on the issues before the Court"; "the power or authority which is conferred upon a Court by the Legislature to hear and determine causes between parties and to carry the judgments into effect"; "the power to enquire into the facts, to apply the law, to pronounce the judgment and to carry it into execution"."

"This jurisdiction of the Court may be qualified or restricted by a variety of circumstances. Thus, the jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The power of a tribunal may be exercised within defined territorial limits. Its cognizance may be restricted to subject-matters of prescribed value. It may be competent to deal with controversies of a specified character, for instance, testamentary or matrimonial causes, acquisition of lands for public purposes, record of rights as between landlords and tenants. This jurisdiction and jurisdiction of the subject matter is obviously of a fundamental character. Given such jurisdiction, we must be careful to distinguish exercise of jurisdiction from existence of jurisdiction : for fundamentally different are the consequences of failure to comply with statutory requirements in the assumption and in the exercise of jurisdiction. The authority to decide a cause at all and not the decision rendered therein is what makes up jurisdiction; and when there is jurisdiction of the person and subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. The extent to which the conditions essential for creating and raising the jurisdiction of a Court or the restraints attaching to the mode of exercise of that jurisdiction, should be included in the conception of jurisdiction itself, is sometimes a question of great nicety, as is illustrated by the decisions reviewed in the order of reference in *Sukhlal v. Tara Chand* and *Khosh Mahomed v. Nazir Mahomed* ILR (1905) 33 Cal.352 see also the observation of Lord Parkar in *Raghunath v. Sundar Das*, ILR (1914) 42 Cal.72 ??.. We must not thus overlook the cardinal position that in order that jurisdiction may be exercised, there must be a case legally before the Court and a hearing as well as a determination. A judgment pronounced by a court without jurisdiction is void, subject to the well-known reservation that, when the jurisdiction of a Court is challenged, the Court is competent to determine the question of jurisdiction, though the result of the enquiry may be that it has no jurisdiction to deal with the matter brought before it. *Rashmoni v. Ganada*, (1914) 20 CLJ 213."

14. An important characteristic distinguishing a Court from a statutory Tribunal is that the Court of law is bound by the rules of evidence and procedure, whereas the statutory Tribunal is not bound by the rules of evidence and procedure unless a relevant statute imposes such an obligation.

15. The application of Order 14 Rule 2(1) CPC came up for consideration before this Court in *A.M. Eswara Mudaliar v. Deputy Commissioner of Endowments, Kurnool*, 2004(3) ALT 594. In the said decision in view of Section 149 of the Act providing for application of the provisions of the Code of Civil Procedure to the extent indicated therein, this Court considered the scope of said Section and held as follows:

"Further, as per Section 149 of the Act the procedure contemplated under Code of Civil Procedure, 1908 (CPC) "as nearly as may be" is applicable to the enquiries under the Act. A Division Bench of this Court in *P. Mohan Reddy v. D.R.T.A, Mumbai* (2004(1) ALT 417 (DB), interpreted the words "as far as

possible" appearing in Section 29 of the Recovery of Debts due to Bank and Financial Institutions Act, 1993 has observed as under.

.....Section 29 of the Act thus authorises the Debt Recovery Officer to follow the Second and Third schedules to income Tax Act, 1961 as far as Possible with necessary modifications. The phrase "as far as possible" can be interpreted in various ways. Keeping in view the intent and object of the Act, in our view, use of this phraseology "as far as possible" in Section 29 does not impose an obligation on the Recovery Officer to meticulously follow the provisions of Section and Third Schedules. Section 29 does provide liberty to Recovery Officer to follow the provisions of Second and Third Schedules with necessary modifications. It gives him enough discretion that he has to follow the provisions of Second and Third Schedules as far as possible and may make necessary modifications. The language employed is such that there is flexibility and not mandate to follow the rules as they are. The Rules no doubt have to be followed but as far as possible with necessary modifications. Therefore, though the procedure under CPC is made applicable, in my considered opinion, Order XIV Rule 2(1) which enables a Civil Court to decide a preliminary issue has no application to the enquiries under Section 83 of the Act. Therefore, first respondent was justified in not entertaining the interlocutory applications filed by petitioners pending adjudication of the original applications. The petitioners may approach first respondent for expeditious disposal of original applications preferably within a period of six weeks from the date of receipt of a copy of this order."

16. In *Ethiopian Airlines v. Ganesh Narain Saboo*, (2011) 8 SCC 539, a three Judge Bench of the Hon"ble Supreme Court considered the scope of proceedings before Consumer Court. When a complaint was filed before the Maharashtra State Consumer Disputes Redressal Commission claiming damages for the deterioration of the goods due to delay in arrival of the consignment at the destination, the Ethiopian Airlines raised a preliminary objection regarding the maintainability of the complaint. The State Commission held that the complaint was not maintainable, but the National Commission set aside the said order. An appeal was preferred by the Ethiopian Airlines. Though, several contentions were raised before the Hon"ble Supreme Court, we are concerned with the contention relating to procedure applicable to the proceedings before the Consumer Court. The Hon"ble Supreme Court held that the proceedings before the Consumer Forums come within its sweep of the term "suit" as held in *Patel Roadways Limited v. Birla Yamaha Limited* (2000) 4 SCC 91, and approved in *Economic Transport Organization v. Charan Spg. Mills (P) Limited* (2010) 4 SCC 114. In respect of the provisions that are applicable for deciding the complaints it was held as follows.

"However, notwithstanding the fact that proceedings of the National Commission are "suits" under the Carriers Act, vide the *expressio unius* principle, The Consumer Protection Act, 1986 clearly enumerates those provisions of the CPC that are applicable to proceedings before the Consumer Fora. Such provisions

include 13(4), in which the Consumer Protection Act, 1986 vests those powers vested in a civil court under the CPC to the District Forum. However, according to the principle of *expressio unius*, because the legislature expressly made the aforementioned provisions of the CPC applicable to the consumer proceedings, the legislature is, therefore, deemed to have intentionally excluded all other provisions of the CPC from applying to the said proceedings. This is particularly true since, as explained above, the Consumer Protection Act, 1986 sets forth an exhaustive list of procedures, distinguishable from those required under the CPC, that the consumer redressal fora must follow. Therefore, since the Consumer Protection Act does not state that Section 86 applies to the Consumer Fora's proceedings, that Section of the CPC should be held to be not applicable."

It was further held as follows.

"This Court in *Savita Garg v. National Heart Institute* (2004) 8 SCC 56) has clearly laid down that the principle that in fora created by the Consumer Act, the provisions of the Code of Civil Procedure are applicable only to a limited extent, therefore, the provisions of the Code of Civil Procedure have not been made applicable to the proceedings of the National Consumer Forum."

17. Thus, it is clear that the procedure prescribed in the Rules made by the Government alone are applicable and the other provisions of CPC cannot be invoked while dealing with the petitions filed before the Tribunal. The rules are self contained and does not give any scope for application of the provisions of CPC.

18. In view of the above clear position of law, the rules framed by the Government in the year 2010 alone govern the procedure before the Tribunals and the provisions of CPC are not applicable.

19. Accordingly, both the Civil Revision Petitions are dismissed. However, in the circumstances, no costs.

20. As a sequel thereto, the miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand closed.