
(2001) 08 AP CK 0102
In the Andhra Pradesh High Court
Case No : AAO No. 2473 of 2000

G.V. Ranga Rao and another APPELLANT
Vs
A.P. State Electricity Board Engineers Association and another RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 — Section 11, 11
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 1, Order 39 Rule 1, Order 39 Rule 10, Order 39 Rule 2, Order 39 Rule 2A
Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 31, 31(1), 31(2), 32, 32(1)
Trade Marks Act, 1999 — Section 76

Citation : (2001) 5 ALD 705 : (2001) 5 ALT 553 : (2001) 3 APLJ 35

Hon'ble Judges : S.B. Sinha, C.J.; S.R. Nayak, J; B. Subhashan Reddy, J

Bench : Full Bench

Advocate : Mr. E. Manohar, for A. Satya Prasad, for the Appellant; Mr. M. Surender Rao, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Whether an appeal is maintainable against an order refusing an application for injunction purported to have been filed under Order 39, Rules 1 and 2 of the CPC read with Section 151 is the question referred to this Bench by a learned single Judge of this Court.

2. Appellants were the petitioners before the learned Court below. They are working as Divisional Engineers in A.P. TRANSCO.

3. They filed a petition being OP No.1361 of 2000 on the file of the Chief Judge, City Civil Court, Hyderabad u/s 11 of the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (for short "the Act") for a declaration that the election scheduled to be held on 9-8-2000 to the 1st respondent Association as illegal, arbitrary and contrary to the procedure contemplated by the 2nd respondent in terms of his notification dated 7-7-2000.

4. In the said proceedings, the appellants also filed an interlocutory application being IA No.2109 of 2000 under Order 39, Rules 1 and 2 read with Section 151 of the CPC restraining the respondents from conducting the election scheduled to be held on 9-8-2000 to the 1st respondent association. By an order dated 24-8-2000 the said application was rejected.

5. Before the learned single Judge a preliminary objection was raised as regards the maintainability of the appeal. In support of the said contention reliance was placed on the decision of this Court in T. Tirumala Reddy, SE, APSEB, Cuddapah and another Vs. APSEB Engineers Association, Hyd. and others, .

6. The appellants, on the other hand, placed reliance upon a decision of the Privy Council in AIR 1948 12 (Privy Council) , which has been followed by the Supreme Court in Maharashtra State Financial Corporation Vs. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Others, , contending that the appeal was maintainable.

7. Mr. E. Manohar, the learned senior Counsel appearing on behalf of the appellants, would submit that having regard to Sections 4 and 141 of the Code of Civil Procedure, the provisions of the CPC are applicable in a proceeding u/s 11 of the Act and thus the right of appeal also must be held to be available to the appellant. Learned Counsel would contend that the District Judge is not a persona designata, but a Court. In support of the said contention reliance has been placed on Adaikappa Chettiar v. R. Chandrasekharan Thevar (supra), Maharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals., (supra), N. Ramamurthy, In Re 1963 (1) AWR 42, Bothula Krishna Brahmam v. Daram Chenchi Reddi (1959) I AWR 265 and S. Elisha and Others Vs. World Missionary Evangelism of India and Others, ,

8. Mr. M. Surender Rao, learned Counsel appearing on behalf of the respondents, on the other hand, would submit that an application u/s 11 of the Act cannot be treated to be a suit and as such the appeal is not maintainable. Strong reliance in this connection has been placed on a Full Bench decision of this Court in Kode Kutumab Rao Vs. Kode Sesharatnamamba, .

9. The said Act was enacted to make law for determining the legal status of societies established or which may be established in future in Telangana area of the State of Andhra Pradesh for the diffusion of knowledge and arts or for the fulfilment of public or religious purposes: Section 7 of the said Act provides for a suit. Section 11 of the Act reads thus:

Dispute regarding management: In the event of any dispute arising among the Managing Committee or the members of society, in respect of any management or dissolution of the society, any member of the society may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it shall deem fit.

Explanation :--"District Court" shall mean, in the City of Hyderabad, First Judge

of the City Civil Court.

10. No appeal is provided in terms of the provisions of the said Act either from an interlocutory order or from a final order passed in the proceedings. The Code of Civil Procedure, 1908 has not been specifically made applicable in relation to a proceeding under the said Act.

11. Sections 4 and 141 of the CPC reads as follows:

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

141. The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation :--In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.

12. Section 4 merely defines the applicability of the procedure under the Code. Section 4 does not confer any substantive right of appeal in favour of a party to a proceeding under the Code. By reason of Section 141, the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. The said provision thus is applicable in respect of the cases to be tried by the civil Courts by virtue of the jurisdiction conferred upon them by special statutes.

13. However, both Sections 4 and 141 deal with procedure and procedure alone. They do not confer any substantive right not expressly given elsewhere by the Code. It is now well settled that the CPC provides both for substantive as well as procedural provisions. A right of appeal, which is a substantive provision, can neither be claimed either u/s 4 or u/s 141 of the Code. (See Gaja Vs. Mohd. Farukh and Others, .

14. Section 104 of the Code states that an appeal shall lie only from the orders specified therein and save otherwise expressly provided in the body of the Code or by any law for the time being in force and from no other orders.

15. We will proceed on the basis that the District Court while adjudicating on an application u/s 11 of the said Act can pass an interim order. But the same does not mean that it has power to grant injunction in terms of Order 39, Rules 1 or

Order 39, Rule 2 of the Code. Order 39, Rule 1 provides for the power of the Court to grant injunction in relation to matters specified in clauses (a), (b) and (c). Order 39, Rule 2 empowers the Court to grant injunction to restrain repetition or continuance of breach.

16. The Courts have power to grant injunctions in exercise of its inherent jurisdiction u/s 151 of CPC in a case where Order 39, Rules 1 and 2 have no application. In terms of Order 43, Rule 1 of the Code, an appeal shall lie only from an order passed under Rules 1 and 2, 2-A, 4 or Rule 10 of Order 39. No appeal lies from an order passed u/s 151 of the Code granting or refusing to grant injunction.

17. Thus, having regard to Section 104 of the Code, even no appeal would be maintainable from an order, which has not been passed inter alia under Order 39, Rules 1 and 2 Code of Civil Procedure.

18. An appeal is the right of entering a superior Court and invoking its aid and interpretation to redress an error of the Court below and though procedure does surround an appeal the central idea is a right. In *Rami Manprasad Gordhandas and Others Vs. Gopichand Shersing Gupta and Others*, , it has been held that right of appeal and revisions are creatures of statute. It was held:

Right of appeal and revision, it is now well settled, is a creature of statute and there can be no inherent right either of appeal or of revision against a judgment or order of a Court.

19. In *Kuhumba Rao v. Sesharatnamamba* (supra) a Full Bench of this Court while considering the provisions of Hindu Marriage Act, 1955, noticed the conflicting views. It was held:

It is well acknowledged as a general principle of law that a right of appeal is not a natural or inherent right attached to litigation. It is not simply a matter of procedure. It is indeed a substantive right and does not accrue unless specifically conferred. In other words, it does not exist and cannot be assumed unless expressly given by the statute or by rules having the force of statute. Being thus a creature of statute, it cannot also be vague.

20. Yet again in *T. Tirumala Reddy, SE, APSEB, Cuddapah and another Vs. APSEB Engineers Association, Hyd. and others*, , *P.V. Reddy, J.*, dealing with the provisions of Section 11 of the Act, held that such an appeal is not maintainable. It was observed:

The provisions of CPC including Order XXXIV Rule 1 cannot be made ipso facto applicable to the proceedings before the said Court under a Special Act merely because the Court which has seisin of the matter is the Principal Civil Court of the District. This is not to say that Act, though skeletal in nature, precludes any application for interim relief including an injunction being sought by the aggrieved party if it relates to a matter concerning the management or dissolution of the society. It is well-settled that the Court or a Tribunal which has

jurisdiction to try or enquire into a matter, has all incidental and ancillary powers so as to effectuate the substantive powers conferred on the Court or Tribunal. The power to enquire into and dispose of the application filed u/s 11 of the Act carries with it, in our view, the incidental or ancillary power to grant an interim order to prevent miscarriage of justice. Such power is, in our view, an adjunct to the power of adjudication conferred on the Court u/s 11 of the Act. That being the legal position, we cannot view the interlocutory application filed by the respondent as an application under Order XXXIX, Rule 1 CPC though a wrong provision was cited. In reality and in substance, it must be deemed to be an application filed u/s 11 of the Act itself and the Court is empowered to pass appropriate orders thereon in exercise of its incidental power as clarified above. When once it is held that the application is not traceable to Order XXXIX, Rule 1 CPC and the order passed thereon is not really an order falling under Order XXXIX, Rule 1 CPC, Order XLIII, Rule 1 CPC cannot be invoked for preferring an appeal. We, therefore, uphold the preliminary objection and dismiss the Civil Miscellaneous Appeal as not maintainable.

21. We may now consider the decisions cited by Mr. Manohar.

22. In *N. Rama Murlhy, In Re* (supra) the question centred round as to whether the District Judge was a *persona designata*. It was held therein that the First Judge of the City Civil Court, empowered to determine the dispute u/s 11 of the Hyderabad Public Societies Registration Act (akin to the present Act), is only a Judge chosen to represent the City Civil Court, but is not a *persona designata* and therefore the orders passed u/s 11 of the Act are passed by a Court and not by the Chief Judge as a *persona designata*. There cannot be two opinions about the aforementioned proposition.

23. But the learned Judge held that an appeal is maintainable only because the Judge of the City Civil Court is a Court and not *persona designata*. The learned Judge, however, did not consider the question, as to whether an appeal is a substantive right and in the absence of the same having been specifically conferred, the same will be maintainable.

24. In *Maharashtra State Financial Corporation v. Jaycee Drugs and Pharmaceuticals*, the Apex Court was considering a matter regarding the maintainability of a petition in the Bombay City Civil Court filed u/s 32(1) and Section 31(2) of the State Financial Corporation Act. Section 46B of the State Financial Corporation Act reads thus:

46-B. Effect of Act on other laws :--The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum of articles of association of an industrial concern or in "any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern.

25. It was held that an order passed u/s 31 in stricto sensu is not a decree. Having regard to the provisions of the Code, the Apex Court quoted with approval the dicta laid down by the Privy Council in *Adaikappa Chettiar* 's case (supra) and held:

"Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of the procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal.

Again in *Secretary of State for India v. Cheillkani Ramarao*, AIR 1916 PC 21 : ILR (1916) 39 MAD 617, when dealing with the case under the Madras Forest Act their Lordships observed as follows:

"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."

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate jurisdiction conferred by Section 76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent there being nothing to contrary in the Trade Marks Act."

It was held:

And it is in view of this decision that we are of the opinion that the provisions of Code would have, even in the absence of Section 46B of the Act, been attracted in the matter of enforcing the liability of a surety.

26. The dicta laid down in the said decision is clearly distinguishable as under the provisions of the State Financial Corporation Act, a right of appeal was conferred to the High Court. It is one thing to say that when a right of appeal is conferred, the same has to be exercised in the same manner by the High Court as it exercises its appellate jurisdiction for the purpose of invoking clause 15 of the Letters Patent but it is another thing to say that right of appeal can be conferred although no such right has been provided under the CPC or under the special statute.

27. In Maharashtra State Financial Corporation case, the Apex Court, on the general principles, held that the procedures laid down for execution of a decree shall apply having regard to the fact that a proceeding under Sections 31 and 32 of the State Financial Corporation Act is maintainable before the District Judge, who is not a persona designata. The Supreme Court did not say that only because the procedural provisions of the CPC are applicable, the substantive provisions would also apply. In fact the CPC does not confer any general right of appeal. Agarwal, J., noticed the decision in Gujarat State Financial Corporation Vs. Natson Manufacturing Co. Pvt. Ltd. and Others, , in the following terms:

This Court has further emphasised that sub-section (7) of Section 32 "prescribes what reliefs can be given after investigation under sub-section (6) is made, and it clearly gives a clue to the nature of contest under sub-section (6)" and further that sub-section (8) of Section 32 "only prescribes the mode and method of executing the order of attachment or sale or property as provided in the Code of Civil Procedure". According to this Court, "the provision contained in sub-section (6) does not expand the contest in the application u/s 31(1) as to render the application to be a suit between a mortgagee and the mortgagor for sale of mortgaged property". This Court has held that "the substantive relief in an application u/s 31(1) is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree."

28. It was also noticed that even the power of the Court u/s 34 Code to grant interest is not appealable. Evidently, the Court was concerned with the procedural provisions of the CPC and not the substantive provisions.

29. In Andhra Bank Limited v. Narasamma 1987 (1) ALT 155, dealing with the provisions of Section 11 of the present Act, this Court held:

The appeal purports to have been filed under Order 43, Rule 1 CPC and Section 11 of the Act. Section 11 does not give any right for any appeal. It only mentions about referring a dispute to the District Court if the dispute relates to the management, no provision is made in the Act giving a right to appeal. Under these circumstances, only a revision lies u/s 115 CPC and Section 151 CPC but certainly not an appeal under Order 43, Rule 1 CPC, Order 43, Rule 1 CPC provides for an appeal against the orders passed under the various provisions of CPC and under the provision of Section 104 CPC and not against the orders passed under Special Act like the A.P. (Telangana Area) Public Societies Registration Act, 1350 F.

30. In S. Elisha's case this Court held that an appeal filed against a final order passed u/s 11 of the Act is not maintainable.

31. From the discussions made hereinbefore, there is no manner of doubt that no appeal is maintainable in this Court under Order 43, Rule 1 of the CPC from the impugned order. But, there cannot be any doubt that a revision petition shall be maintainable.

32. For the reasons aforementioned, the appeal, which is not maintainable, must be dismissed with costs. It is accordingly dismissed. Advocate's fee: Rs.500/-.