

(2002) 05 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Special Appeal No. 760 of 1995 & Civil Spl. Appeal No. 760 of 1995

Hanuman Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1
Constitution of India, 1950 — Article 226

Citation : (2003) 1 RLW 1

Hon'ble Judges : Arun Kumar Mishra, C.J;P.P. Naolekar, J;P.C. Tatia, J

Bench : Full Bench

Advocate : S.N. Sharma, for the Appellant; J.L. Purohit and Rajeev Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Kumar, C.J.—A Division Bench of this Court vide order dated 23.10.1996 referred the following question for consideration by a larger Bench:

"Whether the decision in Sarguja Transport Service's case would operate as an absolute bar against entertainment of any subsequent writ petition when an earlier petition has been withdrawn without liberty to file a fresh petition and in no circumstances a second petition can be entertained by the High Court on the same subject-matter."

In view of the said reference order, the matter has been placed before this Full Bench.

2. We have heard learned counsel for the parties.

3. In order to appreciate the controversy in the case, a brief back-ground may be stated. A writ petition under Article 226 of the Constitution of India was filed in this court challenging an order passed by the Board of Revenue. This writ petition bearing No. 5289 of 1993 was dismissed as withdrawn on 13.03.1995.

Thereafter, a review petition is said to have been filed before the board of Revenue on 30.03.1995. The review petition was rejected by the Board of Revenue on 23.08.1995. On 13.09.1995, another writ petition was filed by the same petitioner challenging the earlier order of the Board of Revenue as well as the subsequent order passed by the Board of Revenue on the review application. This writ petition was dismissed by a Single Judge of this Court on 20.09.1995 in view of the dismissal of the earlier writ petition on the same cause of action without reserving liberty to institute another petition. On 09.10.1995, a special appeal was filed before the Division Bench against the order of the learned Single Judge. In the said special appeal the above-quoted reference order was passed on 23.10.1996.

4. It will be seen from the reference order that main point for consideration before this Bench is as to whether the judgment of the Supreme Court in Sarguja Transport Service's case (1) operates as an absolute bar against entertainment of a subsequent writ petition. We have been taken through the said judgment of the Supreme Court. The Supreme Court has clearly considered the advisability of permitting another petition being filed on the same cause of action when an earlier petition is dismissed as withdrawn without reserving liberty to file a fresh petition, Drawing analogy from the principle underlying Rule 1 Order XXIII of the C.P.C., it was held that it was not so much on the ground of res judicata that the subsequent petition was being disallowed. The real reason behind this was a matter of public policy. A litigant should not be allowed to re-agitate the same cause of action once he has availed of an opportunity to approach the Court with respect thereto. After having approached the Court with a writ petition Under Article 226 of the Constitution of India on the basis of a specific cause of action and having sought a specific remedy with respect thereto, it should not be open to the litigant to approach the Court all over again on the same subject- matter, withdrawal of the earlier writ petition should mean that the litigant has abandoned his cause of action and having once adopted the said course of action he/she should not be permitted to resile from it and approach the Court again for same relief based on same cause of action. If this allowed it would lead to malpractices like forum hunting and also there will never be finality with respect to a cause.

5. The following observations of the Supreme Court in the case of Sarguja Transport Service (supra) leave no scope for any doubt for the review that a second writ petition on the same cause of action is absolutely barred:

"But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again.

While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open."

6. In the reference order, the Bench noted the observations in the last para of the judgment in Sarguja Transport Service's case that even on merits the appellant had no case. This observation, in our view, has no bearing nor does it water down in any manner the ratio of the decision of the Supreme Court on the main point in issue about maintainability of the second writ petition on the same cause of action when earlier petition has been withdrawn without reserving liberty to file fresh petition. The main judgment in this connection is based on reasons derived from sound legal principles. We are bound by the decision. As a matter of fact, the decision in Sarguja Transport Service's case (supra) on this aspect has been consistently followed by the Supreme Court in various subsequent decisions viz., *Ashok Kumar v. Delhi Development Authority* (2); *State of U.P. v. Lab Chand* (3); and *Avinash Nagra v. Navodaya Vidyalala Sarniti and Ors.* (4).

7. Thus, we hold that the decision of the Supreme Court in Sarguja Transport Service's case (supra) operates as an absolute bar against entertainment of another subsequent writ petition when an earlier petition has been withdrawn without reserving liberty to file fresh petition and second petition cannot be entertained by the High Court on the same subject-matter, except in petitions in the nature of habeas corpus for which exception has been carved out in the said decision of the Supreme court. The reference is answered accordingly.

8. The result in that the appeal stands dismissed.