
(2004) 02 MP CK 0056

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 721 of 2003

Jabalpur Development Authority

APPELLANT

Vs

Y.S. Sachan and Others

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 141, 96
Constitution of India, 1950 — Article 226, 227

Citation : (2004) ILR (MP) 231 : (2004) 2 JLJ 9 : (2004) 2 MPHT 314 : (2004) 2 MPLJ 178

Hon'ble Judges : Kumar Rajaratnam, C.J.; Shantanu Kemkar, J.; Dipak Misra, J

Bench : Full Bench

Advocate : Sharad Verma, for the Appellant; Sanjay K. Agrawal, Rohit Arya and Ajay Mishra, Amicus Curiae, for the Respondent

Judgement

Kumar Rajaratnam, C.J.

In this appeal preferred under Clause 10 of the Letters Patent the legal validity of the order dated 5-8-2003 passed by the learned Single Judge in W.P. No. 3411/2000 has been called in question whereby the learned Single Judge has allowed the writ petition preferred under Articles 226 and 227 of the Constitution of India in part. During the pendency of this appeal the respondent No. 1 preferred a cross appeal. The Division Bench expressed the view that the matter involved an important question of law and thought it appropriate that the matter should be placed before the Full Bench. An added importance, which the Division Bench felt, is the Division Bench decision of the High Court of Andhra Pradesh rendered in the case of Chittoor Co-operative Town Bank Ltd. Vs. T. Krishnaiah Chetty and Another, Though the said judgment, strictly speaking, is not a binding precedent on this Court but has the persuasive effect, yet such a pronouncement would have far reaching effect, it was thought apposite to clarify the position and accordingly the matter was recommended to be heard by a Larger Bench. In this background, the matter has been placed before us.

The question that falls for consideration before the Full Bench is framed thus :--

"Whether in a writ appeal preferred under Clause 10 of the Letters Patent, an intra Court appeal, being an appeal on the appellate side of the Court arising from a case decided in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India would a cross-objection under Order 41, Rule 22 of the CPC would be entertainable or in the alternative whether filing of such cross-objection is contemplated in a writ petition preferred under Article(s) 226 and 227 of the Constitution ?"

At the outset we think it necessary to reproduce the reasonings ascribed by the High Court of Andhra Pradesh in the case of Chittoor Co-op. Town Bank Ltd. (supra). In Paragraph eight therein it has been held as under:--

"Under Order 41, Rule 22 of the CPC there is a specific provision for the filing of cross-objections. These provisions admittedly apply to all appeals filed under Clause 15 of the Letters Patent. So much so, against the judgment rendered by the learned Single Judge upon a first appeal when a Letters Patent Appeal is filed, in that Letters Patent Appeal, cross-objections could be filed by the respondent therein. We fail to see how and when the writ appeal also is filed under Clause 15 of the Letters Patent, the provisions of Order 41, Rule 22, CPC could be excluded, there is no rule in the Writ Proceedings Rules which can be said to be inconsistent with Order 41, Rule 22, Civil Procedure Code. In fact the rules are silent as to whether cross-objections could be filed or not. We may add that the Writ Proceedings Rules by themselves do not provide any remedy. They regulate the proceedings which may be instituted by virtue of some other provisions of substantive law, the writ petitions are filed under Article 226 of the Constitution and the writ appeals are filed under Clause 15 of the Letters Patent. It is to govern these proceedings that the writ proceedings Rules have been framed. This was necessity for the reason that in the Appellate Side Rules, there is no specific provision governing the writ petitions. Moreover, specific procedure had " to be devised for regulating the petitions filed before this Court on the Original Side invoking the extra-ordinary jurisdiction of the High Court. The rules are procedural rules and do not confer or take away the substantive right of appeal or the right of filing of cross-objections. On the other hand there is an express provision in Rule 24 that in relation to causes and matters coming up before the High Court on the original side or the appellate side, the provisions of the CPC will govern. We therefore, felt no hesitation in holding that the writ appeal being a proceeding on the appellate side of the High Court and being a civil proceeding, the provisions of the CPC would apply and Order 41, Rule 22, CPC which makes, a provision for the filing of cross-objections, would therefore, equally apply to a writ appeal. Consequently, the cross-objection, which in this case is termed as "cross writ appeal" are maintainable. The mere fact that it has been numbered as an independent writ appeal does not affect to the character of the petition filed by the writ petitioner. The "cross writ appeal" is accordingly treated as "cross objections" under Order 41, Rule 22, CPC and the same having

been filed before expiry of thirty days of the filing of the main Writ Appeal No. 967/82 no question of limitation arises. In objection as to maintainability of Writ Appeal No. 1093 of 82 is overruled."

We have reproduced the same so that we can appreciate the logical analysis and inference that have been made in the said decision. At this stage we may profitably refer to Section 141 of the Code of Civil Procedure. It reads as under:--

"Section 141. Miscellaneous Proceedings.-- 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."

The question of applicability of the CPC came up for consideration in the case of Puran Singh and others Vs. State of Punjab and others, . In the said case the Supreme Court reiterated the view that if the procedure adopted for a suit is to be adhered to the case of a writ petition the entire purpose of having a quick and inexpensive remedy would be defeated, as a writ petition under Article 226 being essentially different from a suit. Their Lordships eventually expressed the view as under:--

"When the High Court exercises extra-ordinary jurisdiction under Article 226 of the Constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in view of the conflicting opinions expressed by the different Courts, the Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression "proceeding" does not include "any proceedings under Article 226 of the Constitution" and statutorily recognised the view expressed by some of the Courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceeding within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed 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" it shall not include a proceeding under Article 226 of the Constitution. In this background according to us, it can not be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, had said that the words "as far as it can be made applicable occurring in Section 141 of the Code made it clear that in applying the various provisions of the Code to the proceeding other than those of a suit, the Court has to take into consideration the nature of those proceedings other than

those of a suit, the Court has to take into consideration the nature of those proceedings and the reliefs sought for "after introduction of the explanation the writ proceedings have to be excluded from the expression "proceedings" occurring in Section 141 of the Code. If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the Procedure of the Code as far as it can be made applicable" to such proceeding. The procedure prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extra-ordinary powers by the High Court under Articles 226 and 227 of the Constitution."

Thereafter in Paragraph 9 it has been held as under :--

"9. We have not been able to appreciate the anxiety on the part of the different Court in judgments referred to above to apply the provisions of the Code to writ proceedings on the basis of Section 141 of the Code. When the Constitution has vested extra-ordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all Courts and Tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising the power of the High Court by procedural provisions prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power for granting relief to persons, who have invoked the jurisdiction of the High Court. It need not be impressed that different provisions and procedures under the Code are based on well recognised principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, it can not be disputed that many procedures prescribed in the said Code are responsible for delaying the delivery of Justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable, but also expeditious."

At this juncture we may profitably refer to the decision rendered in the case of Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, . In the said case in Paragraph 23 it has been held as under:--

"23. In our view, the opinion expressed by Mookerjee, J., of the Calcutta High Court on behalf of the Division Bench in Nishambhu Jena case and the view expressed by U.N. Bachawat, J., in Tej Kumar, case in the Madhya Pradesh High Court reflect the correct legal position after the 1976 Amendment. We hold that the respondent/defendant in an appeal can without filing cross-objection attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to the extent the Lower Court had dismissed the suit against the defendant/respondent. The filing of cross-objection, after the 1976 Amendment is purely optional and not mandatory. In other words, the law as stated in Venkata Rao, case by the Madras

Full Bench and Chandra Prabhuji case by this Court is merely clarified by the 1976 Amendment and there is no change in the law after the amendment."

However it is worthwhile to note here that in the said case the Supreme Court was dealing with a proceeding that arose from a Title Suit filed under the Code of Civil Procedure. The learned Counsel for the first respondent has commended us to the decision rendered in the case of Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, . In the aforesaid case in Paragraph 16 (1) Their Lordships posed the question and in Paragraph 17 answered the same. They read as under :--

"16. (1) Whether the respondents can justify the final order of the High Court on other grounds upon principles referable to Order 41, Rule 22 of the CPC without filing an appeal in time ?

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In view of the recent judgment of this Court in Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, , it is, in our opinion, open to the respondents to attack the adverse findings arrived at or observations made by the High Court, even if the respondents had not filed a separate appeal against that part of the judgment. Hence, the respondents can contend that the finding or observations that their appointments were tainted was not correct. We have also condoned the delay in filing the SLP (CC 3960/99) and therefore, for both reasons, it will be open to them to attack the said finding in the appeals of the appellants or as appellants in their own Civil Appeal arising out of SLP (CC 3960/99)."

At this juncture we may usefully refer to the three Judge Bench decision rendered in the case of J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. Collector of Central Excise, , wherein in Paragraphs 26 and 27 the Supreme Court expressed the view as follows :--

"26. The aforesaid decision was cited before another three Judge Bench in the case of Baru Ram v. Prasanni, where it was not dissented from. But in the light of the decision of the Constitution Bench of this Court in Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji, the ratio adopted in the earlier-mentioned two decisions is no more in vogue. The Constitution Bench held that this Court has power to decide all points arising from the impugned judgment and even in the absence of an express provision like Order 41 Rule 22, Civil Procedure Code, this Court can devise appropriate procedure to be adopted at the hearing. The observations of the Bench which are relevant now are the following :--

"There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the CPC and adopting such of those provisions as are suitable. We can not lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Consideration of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to

support the judgment in his favour even upon grounds which were negated in that judgment. We are, therefore, of the opinion that in Vashisht Narain Sharma, case too narrow a view was taken regarding the powers of this Court....."

We, therefore, concede that the respondents can not be precluded in this appeal from canvassing for reversal of a finding contained in the impugned judgment despite its end result being in their favour."

(Italics by us)

On a perusal of the aforesaid decision it is noticeable that Their Lordships referred to the decision rendered in the case of Ramanbhai Ashabhai Patel Vs. Dabhi Ajitkumar Fulsinji and Others, , the Constitution Bench judgment wherein it has been held that a party can always support the judgment in his favour even on grounds that was negated in the impugned judgment.

If the aforesaid judgment is considered in juxtaposition of the law laid down in the case of Puran Singh (supra) there can be no doubt that a respondent can defend the judgment passed in a Letters Patent Appeal where the order of the Single Judge is under assault. The moot question that arises for consideration is whether in such an appeal a cross-objection can be filed. A party who is aggrieved by an order of the learned Single Judge can prefer an independent appeal. The cross-objection has a different connotation. The concept of cross appeal has a different contour and colour. A cross-objection or a cross appeal is filed after receipt of the notice within the time provided under Order 41, Rule 22 of the Code of Civil Procedure. But, there is no concept of filing of cross objection in a Letters Patent Appeal in the Rules. Rules have been framed for filing of letters patent appeals. An LPA has to be filed within thirty days. In this context we may profitably refer to the relevant Rule. It reads as under :--

"XIII (1) Any appeal under Clause 10 of the Letters Patent shall be filed within 30 days from the date of judgment, and order of the Single Judge:

Provided, however, that, any delay in filing the appeal may be condoned for good and sufficient reason.

(2) In computing the period of limitation for an appeal under Clause 10 of the Letters Patent, the time taken for obtaining leave to appeal, when such leave is necessary and the time taken for obtaining certified copy of the judgment and order or decree, shall be excluded.

(3) A memorandum of appeal under Clause 10 of the Letters Patent shall be accompanied by two certified copies or one certified copy and one photocopy or two photo-copies of the judgment and order or decree appealed from."

On a perusal of the aforesaid Rule it is clear that there is provision for condonation of delay in preferring an appeal. But that does not necessarily mean that a cross-objection or cross appeal can be filed awaiting notice in appeal. It is relevant to state that no cross-objection is entertained under Article 226 of the

Constitution of India like a counter claim in a suit. True it is, in a letters patent appeal the facts and law can be gone into by the Court deciding the intra Court appeal but that does not necessarily convey that while hearing an appeal, a cross objection would be entertained when a counter claim or counter relief is not entertained in a writ petition, at the instance of the opposite party or respondent therein. Another facet is worth noting. A cross-objection has its own independent existence under the CPC but the same can not be construed to apply to a proceeding under writ jurisdiction or an appeal arising therefrom. The High Court of Andhra Pradesh in the decision rendered in the case of Chittoor Co-operative Town Bank Ltd. (supra) has applied concept of the Order 41, Rule 22 in entirety. In our considered opinion the same is not permissible as per the law laid down in the case of Puran Singh (supra). In the case of Puran Singh (supra) the Supreme Court has held that the High Court should be left to adopt its own procedure for granting relief to the persons. An appeal from an order made under Article 226/227 is in a different realm altogether and can never be understood to mean that a cross objection which a matter of statutory right under the CPC would lie to the Court when the LPA is admitted.

At this juncture, we may clarify that in LPA that arises from an appeal disposed of u/s 96 of the CPC or in other appeal to which a CPC applies the matter would be totally different and a cross-objection would be maintainable but we can not subscribe to the view that in the matters relating to writ appeal, a cross-objection can be filed. Hence, we hold that the law laid down in the case of Chittoor Co-op, Town Bank Ltd, (supra) does not state the law correctly.

Though we have expressed the view that cross-objection or cross-appeal at the instance of the respondents in Letters Patent Appeal is not maintainable, however, keeping in view the pronouncement of the Supreme Court, it can be said that it is always open to the respondents to file an independent appeal assailing the order of the Single Judge but said appeal should be filed within the stipulated time provided under the Rules framed by the High Court and if there is any delay, with a prayer for condonation of delay. We may also add that it would be open to the respondents to support the judgment passed by the learned Single Judge on some other additional grounds. The respondent may attack a finding on a different foundation.

Thus we answer the reference as under:--

"Cross objection as envisaged under Order 41, Rule 22 of the CPC would not be maintainable in a Letters Patent Appeal that arises from a proceeding under Articles 226 and 227 of the Constitution but the same would be maintainable if the Letters Patent Appeal is preferred from an appeal u/s 96 of the CPC and further the respondents in LPA, if aggrieved by any part of the judgment of the Writ Court, can file an independent appeal within the time frame provided under Rule 13 of the High Court Rules and Orders for preferring the appeal and may seek condonation of delay, and in addition may defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in

the order."

We place on record the assistance rendered to the Court by Shri Sharad Verma, Advocate, Shri Sanjay Agrawal, Advocate and Shri Rohit Arya, Senior Advocate.

Let the matter be placed before the Division Bench for appropriate disposal.