

(1998) 12 KAR CK 0003
In the Karnataka High Court
Case No : M.F.A. No. 4149 of 1998

Karnataka State Road Transport Corporation
Vs

APPELLANT

Kalwa Prakash and Another

RESPONDENT

Date of Decision : 11-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 43 Rule 1, Order 9 Rule 13, Order 9 Rule 9, 151
Criminal Procedure Code, 1973 (CrPC) — Section 195
Motor Vehicles Act, 1988 — Section 165 (1), 165 (3), 169, 175

Citation : (2000) ACJ 1537

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : D. Vijayakumar, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard the learned counsel for the appellant.

2. This appeal is directed against the order passed on an application for restoration and for setting aside the order of dismissal for default. The application was moved under Order 17, Rule 2 read with Section 151, Civil Procedure Code. The Tribunal rejected that application opining that there was no good ground to restore. Feeling aggrieved from that order, the appellant K.S.R.T.C. has come up before this court by way of an appeal under Order 43, Rule 1.

3. It has been contended on behalf of the appellant that the appeal from the order rejecting the application for restoration is maintainable under Order 43, Rule 1 of Civil Procedure Code. This argument has been advanced with regard to the office objection.

4. I have applied my mind to the contentions raised by the learned counsel for the appellant.

It has to be taken note of that the Motor Accidents Claims Tribunal by itself is not a civil court. It is a Tribunal constituted under the Motor Vehicles Act. This emerges from the perusal of the provision of Section 165, Sub-sections (1) and (3) of Section 165 read with Section 175 of the Motor Vehicles Act. Section 9, CPC read with Motor Vehicles Act 1988, specially Section 175 bars the jurisdiction of the civil court to entertain any matters which are cognizable by the Motor Accidents Claims Tribunal. This court has also opined in very many cases including that of The Oriental Insurance Company Limited, Bangalore Vs. Thibbegowda and Others, . It is further clarified that from the provision of Section 169 itself which have been referred by the learned counsel for the appellant in support of his contention that CPC applies. Section 169 reads as under:

169. Procedure and powers of Claims Tribunal.-(1) In holding any inquiry u/s 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a civil court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed and the Claims Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(3) xxx xxx xxx"

5. A reading of the section per se reveals that the Claims Tribunal has been empowered to follow summary procedure which it thinks fit while holding the inquiry. But, this power is subject to the rules framed under this Act (i.e., Motor Vehicles Act). Sub-section (2) specifically provides that the Claims Tribunal shall have all the powers of a civil court for a limited purpose or limited purposes as specified in Sub-section (2) and for purposes that may be prescribed under the Rules. This reading of Section 169(2) per se reveals that the Claims Tribunal is not treated by itself to be a civil court. Otherwise, if it would have been a civil court, CPC would have applied by its own force. This sub-section says that the Claims Tribunal shall have all the powers of a civil court for limited purpose. Further with reference to Section 195 and Chapter 26 of Code of Criminal Procedure, the legislature again takes note that really the Claims Tribunal is not intended to be a civil court in ordinary course. Therefore, for the purpose of Section 195 and Chapter 26 of the Code of Criminal Procedure, it has to be deemed to be a civil court. The principle of legal fiction is that when a legal fiction is provided its scope is to be determined and examined in the context of the purpose and object for which the legal fiction is adopted under the Act. This section per se reveals that the Claims Tribunal has been deemed to be a civil court for the purposes of Section 195 and Chapter 26 of Code of Criminal Procedure. If in ordinary course the Tribunal would have been a civil court and not Tribunal, there would have been no need for the legislature to provide this

deeming clause or legal fiction. Then further Section 169(2) reveals its extent of operation by using the expression used in Section 169(2) of the Act, i.e., purposes of Section 195 and Chapter 26 of Criminal Procedure Code only. As such, Tribunal cannot be deemed to be civil court except for the purpose of Section 195 and Chapter 26 of Criminal Procedure Code.5-A. No doubt, Order 43 may apply and provide for appeal in matters of orders passed under Order 9, Rule 9 or Order 9, Rule 13 read with Order 17, Rule 2 of Civil Procedure Code. But as the Tribunal by itself is not a civil court, Order 43 will not apply by its own force. The powers of civil court for other purpose may also be provided under the Rules. Rules 253 and 254 of the Rules framed under the Motor Vehicles Act, 1988 further provide that what powers under what provisions may be exercised by the Tribunal which powers are vested in the civil court under the Civil Procedure Code. Rule 253 refers to various sections including Section 151 of the Code. It also provides that the Tribunal shall have power of the civil court for the purpose of execution of award. Rule 254 further provides that in relation to the proceedings before the Claims Tribunal, the specific provision as in Clauses (a) and (b) of Rule 254 will apply. In Clause (b) of Rule 254 no doubt Order 9 and Order 17 are mentioned. But, there is no mention of powers of the civil court under Order 43 of the Civil Procedure Code. This clearly indicates that no doubt from an order passed by the Claims Tribunal either dismissing the claim petition for non-prosecution or decreeing or giving the award ex parte, apart from the remedy of appeal from the award itself the remedy of moving an application for restoration or for setting aside ex parte decree, no doubt, is available as Order 9 and Order 17 have been made applicable in relation to matters of the Tribunal. But the provisions of Order 43 have not been made applicable.

6. The learned counsel for the appellant contended that the appeals do lie to the High Court. He submitted that the Tribunal while exercising powers of civil court under Order 17, Rule 2 passes an order, then it may be treated that the order is passed by the civil court and appeal should be taken to be maintainable.

7. The appeal is a right conferred on the party from the proceedings under the Act and unless special Act does so provide a person cannot claim remedy of appeal as of right. The provision for appeal is only contained in Section 173 of the Motor Vehicles Act. When Section 173 provides appeal only against the award and not against the order in the nature of orders passed under Order 9 or Order 17, it means intention of the legislature was not to provide specific relief. If the Order 43 would have been mentioned in Rule 254, might it be said that remedy is there. But Act does provide remedy of appeal only against the award. That to avoid any further delay, it appears intention of the legislature is not to provide appeals from the order dismissing the claim for non-prosecution or from the ex parte awards given. No doubt, two remedies were available under order of dismissal of the claim. As the appeal is not maintainable under Order 9, Rule 9 read with Order 17, Rule 2 and remedy remained open to the claimant against the dismissal of the claim for non-prosecution, i.e., award in the nature of order dismissing the claim u/s 173 the appellant could have filed the appeal against

that order dismissing the claim. Any way, for the present, in my opinion, the appeal from Order 9, Rule 9 read with Order 17 is not maintainable as the provisions of Order 43, CPC have not been incorporated and the powers under that Order have not been made available to the Tribunal as such the remedy of appeal to the person aggrieved from such order, i.e., order on an application under Order 9, CPC is not available by virtue of Order 43, Civil Procedure Code.

8. In this view of the matter, in my opinion, appeal is not maintainable and it is dismissed with liberty to the appellant to file an appeal against the original award dismissing the claim petition for non-prosecution explaining the cause for delay in the light of Section 14 of the Limitation Act and also quite sure that if appeal is filed within a period of six weeks from the date of this order or receipt of the copy of this order whichever is later. Then when matters come up in appeal for adjudication of delay, the matter may be considered sympathetically.

With these observations, the appeal is dismissed.