

(1963) 02 CAL CK 0028

In the Calcutta High Court

Case No : Civil Revision Case No. 648 (w) of 1962

Lahoriram Prashar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-02-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226

Citation : 67 CWN 732

Hon'ble Judges : Banerjee, J

Bench : Single Bench

Advocate : P.K. Sen Gupta, Hemesh Chandra Sen and Arun Prokash Chatterjee, for the Appellant; J. Majumdar and Susil Kumar Biswas for Respondent Nos. 1 and 5, Noni Coomar Chakravarti and Chittatosh Mookerjee for Respondent Nos. 2 and 3 and R.M. Dutta and Mrs. Archana Sen Gupta, for the Respondent

Judgement

Banerjee, J.—One Kanhayalal Kanodia, since deceased, claimed to be the owner of a studio at premises No. 20, Baburam Ghosh Road, Tollygunge. Respondents No. 2 and 3 are his legal representatives. Whether at the material time Kanhayalal Kanodia had a subsisting leasehold right in premises No. 20, Baburam Ghosh Road is a disputed question. I need not, however, go into that question in this Rule.

2. The petitioner Lahoriram Prashar is at present the sole proprietor of a film producing business known as Unity Production. The petitioner claims to have taken on hire the said studio at a monthly rent of Rs. 12,500/-. He says that he was making considerable income from the said studio.

3. In May, 1943, premises No. 20, Baburam Ghosh Road were requisitioned under the provisions of the Defence of India Act, 1939 and the Rules thereunder framed and possession thereof was taken on August 11, 1943.

4. Upon requisition as aforementioned, claims for compensation were separately made by Unity Production and Kanhayalal Kanodia. These claims were considered

by the Collector, who, upon hearing the claimants, recommended that the Government should pay a monthly recurring compensation of Rs. 1000/-. Me further recommended payment of an additional sum as compensation for removal charges. The Collector, however, held that Unity Production was alone entitled to the compensation, to the exclusion of Kanhayalal Kanodia. It is not necessary for me to go into further details of the award for the purposes of this Rule.

5. Against the recommendation made by the Collector, Unity Production and Kanhayalal Kanodia obtained two separate references to an Arbitrator, appointed u/s 19 of Defence of India Act, 1939. The reference obtained by Unity Production was numbered case No. 113 of 1944 and that obtained by Kanhayalal Kanodia was numbered case No. 21 of 1945. The claims in the two references rested on loss of earning or income. There was an order made for analogous hearing of the two references.

6. On February 18, 1948, Mr. R.S. Trivedi, the Arbitrator, disposed of both the references by one award and observed as follows: --

Kanodia only purchased from the Receiver the Film Corporation's assets. He had no leasehold interest in the premises at the material time. That being so Unity Production had no such interest either * * * * I hold that Kanodia and Unity Production are not entitled to the amounts of compensation claimed by them in these cases, viz. Rs. 12,500 per month which Kanodia said he was receiving from Unity Production and the several lacs of rupees which Unity Production demands for loss of business profits and for incidental expenses. I reject these claims. The Collector's offer of Rs. 1000/- a month as rent of the premises (remains ?) unaffected by this decision. Whoever is entitled to that may draw it without prejudice

7. Unity Production did not appeal against the award. The result was that the award in so far as it governed the reference obtained by Unity Production (Case No. 113 of 1944) became final. The heirs and legal representatives of Kanhayalal Kanodia, who had died in the meantime, however, appealed against the award in so far as it governed reference Case No. 21 of 1945. The appeal came up for hearing before Rama Prosad Mookerjee and Renupada Mukherjee, JJ. and their Lordships' decision is reported in (1) Santi Devi and Another Vs. Province of West Bengal, . Their Lordships allowed the appeal with the following observations: --

What is the nature of the right and how it is to be valued must depend upon a proper determination of the necessary facts and the legal consequences thereof. Suffice it to say for our present purposes that the decision of the learned Arbitrator that Kanodia had no subsisting right to claim compensation was an erroneous decision and must be set aside. As the question had been taken up as a preliminary issue only, all the other issues in the case will have to be tried in the usual way and according to law.

The result, therefore, is that this appeal is allowed and the award of the Arbitrator, dated February 18, 1948, in Land Acquisition Case No. 21 of 1945 is set aside and the case is remitted to an Arbitrator duly appointed u/s 19 of the Defence of India Act for trial of the remaining issues and for determining what compensation is payable to the present appellants claimants.

8. So long as the appeal by the legal representatives of Kanhayalal Kanodia was pending in this Court, Unity Production (that is to say the present proprietor thereof, namely, the petitioner) kept aloof and took no step against the award, which had dismissed its claim for compensation. Fortuitously, however, it received about Rs. 44,000/- out of the award for monthly compensation. After the reference in which the heirs of Kanahayalal Kanodia were interested had been remitted for reconsideration, the present petitioner emerged on the scene but could not take any effective step until some time later. That was because in spite of the remand order, made as far back as 1953, no progress was made in the reference before the Arbitrator. Several Arbitrators came to be appointed one after another but the proceeding took a leisurely course until it reached the hands of Mr. W.C. Basu Majumdar, when for the first time the petitioner asked to be permitted to proceed with his claim, on the ground that the award in his case also had been set aside by the judgment of this Court reported in (1) Santi Devi and Another Vs. Province of West Bengal, . The actual prayer was that Reference Case No. 113 of 1944 should also be heard along with the other Reference Case No. 21 of 1945 (since renumbered as Case No. 210 of 1957). This prayer was rejected by Mr. Basu Majumder. The reference made to Mr. Basu Majumder, however, did not continue and there was another notification made by the respondent State Government, appointing Mr. A.K. Das as the Arbitrator in Case No. 210 of 1957. Before Mr. Das, there was another application made by the petitioner, in which he prayed in effect for reconsideration of the order passed by the Arbitrator's predecessor Mr. Basu Majumdar. This prayer was rejected by Mr. Das by his order dated June 29, 1961, on the following ground: --

The initial point urged was that though there was no appeal against the decision by Shri Trivedi, his judgment having been set aside, the entire matter should be reheard in the presence of Unity Production. The argument is fallacious and cannot be accepted. Although there was a single judgment to cover the references, there being no appeal against the decision in which Unity Production was the claimant, that should be final so far as Unity Production is concerned and the petitioner cannot be permitted to re-agitate his claim. The fact that the matter is pending before the Arbitrator and not in the Civil Court makes no difference as the principle of finality of judgment applies in both the cases. If the Unity Production was dissatisfied with the decision by Mr. Trivedi it ought to have appealed against the decision and having failed to do so, it cannot be heard again.

My attention has been drawn to similar application in the reference at the instance of Unity Production and this application was rejected by the then

Arbitrator Shri W. Basu Majumdar, by order No. 43 dt. 4.2.61. Although the reference before me is a new one and I have been appointed Arbitrator afresh, the same principle of finality should attach to the order rejecting the application. If Unity Production was dissatisfied with the order, dated 4.2.61 they could clearly move superior Courts against the order. But they cannot be permitted to re-agitate the same question in connection with the requisition of the same property, although the appointment was by a different order. In my view, therefore, I hold that this application is misconceived and the applicant cannot be permitted to interfere.

9. Against the aforesaid order, the petitioner moved under Article 226 of the Constitution and obtained a Rule, being Civil Rule No. 764(W) of 1961. That Rule was discharged by Sinha, J. Against the order of discharge of the Rule, the petitioner preferred an appeal, being (2) F.M.A. 11 of 1962 (Mandamus). That appeal came up for hearing before Bose, C.J. and Debabrata Mookerjee, J. and their Lordships dismissed the appeal with the following observations: --

(a) "It has been said that the award which was the subject matter of appeal before this Court could not in law be treated as an award at all. The learned Arbitrator failed to discharge his duties and merely recorded an order of disallowance without taking care to determine the claim to compensation of the parties concerned or the quantum of compensation available to them. The award was described as "nil" award and that being so, it was a nullity. If it was a nullity, the argument proceeded, then it was not necessary for the appellant to challenge it by way of appeal. It was not necessary in that view to take any notice of the award and if that is the correct position then the proposal of the Collector remained and the steps to be taken thereafter in accordance with the Defence of India Act still remain to be taken. The alternative contention is that if it was not a nullity but merely an erroneous award, which was the subject matter of appeal, then that award was set aside as a whole. Reliance was placed upon the circumstance that the Division Bench of this Court had overruled the preliminary objection that the award was not appealable, because the value of the appeal in that case was below the required value. The objection was negative on the reasoning that the award must be viewed in its entirety as one award and could not be taken piecemeal. If that was the position in law, upon which the learned Judges relied in overruling the preliminary objection as to the maintainability of the appeal, then the appellant was entitled to argue that the award as a whole had been set aside, despite the circumstance that he had not himself appealed against it.

These arguments are attractive no doubt, but we must say at once that whatever the reasons which may have weighed with the learned Judges who decided the appeal, we are bound by the decision they rendered. They made it perfectly plain that they were dealing with the appeal, which was before them, and that appeal arose out of Land Acquisition Case No. 21 of 1945. The words actually used in directing a remand were "the award of the Arbitrator, dated February 18, 1948,

in Land Acquisition Case No. 21 of 1945 is set aside," followed by a direction that the case was remanded for further consideration by the Arbitrator to be appointed under the Defence of India Act. That being the position, the matter is not left in doubt that the case of Kanhayalal Kanodia alone was directed to be dealt with by the Arbitrator. It may be observed here that originally there were two References upon two claim cases by two parties, viz. the Unity Production, now represented by the appellant, and Kanhayalal Kanodia, now represented by his heirs and legal representatives. It is true that the Collector made one proposal, but thereafter on receipt of objections, there emerged clearly two References, and these two References, at some stage before one of the several Arbitrators, who happened to have dealt with them, were directed to be dealt with analogously. We do not think that an order for analogous hearing has the effect of merging the two References into one. Analogous hearing would mean hearing of two or more cases which on the ground of convenience are heard together or one after another. This is what was done in the present case and Sri Trivedi dealt with the two References together and disposed of them by one award. Thereafter, when an appeal was brought by Kanhayalal Kanodia, it was in respect clearly of the Reference in which he was interested, and the learned Judges made it abundantly clear that they were dealing with and disposing of his Reference and his Reference only.

We, therefore, cannot accept the position that although the appellant did not prefer any appeal from the Arbitrator's decision, he would still be entitled to the benefit of the order of remand made by this Court."

(b) "We are not prepared to pronounce on the argument that the award made by Sri Trivedi is a nullity and it is not open to us to examine, in view of the operative part of the conclusion recorded by the Division Bench, the further argument that the award being one must be deemed to have been set aside in favour of the appellant as well. Upon the contention of Sri Trivedi's award being a nullity, we propose to say nothing. If it is a nullity, it may be open to the appellant to ignore it or to take such steps as he may be advised to take."

(c) "It was then argued that since the proceedings before the Arbitrator would attract the provisions of the Code of Civil Procedure, it is open to the appellant to ask to be put into the proceedings in terms of Or. I, r. 10 of the Code of Civil Procedure. It is true the rules of the CPC apply to these proceedings; but whether Or. 1, r. 10 will apply is a question primarily for the Arbitrator to decide, and we do not feel justified in expressing any opinion in the appeal. This contention involves variation or substantial modification of the appellant's previous contentions. The modified position suggested by the argument is that even if the appellant has no claim to compensation, still the interests of natural justice demand that he should be permitted an opportunity to appear in the proceedings before the Arbitrator in terms of Or. 1, r. 10 in order that he might protect his own interests. We must say at once that before the Arbitrators the implications of the prayers were quite wide and quite different and the appellant

asked either to be put into the proceedings, or prayed that the Reference in which he was interested be heard and determined. Apart from the merits of this modified stand, it does not appear to have been taken at all before any of the Arbitrators. If such a prayer was made, appropriate orders would have been passed, but nothing would be more improper than to express an opinion on the anticipated result of such application."

(d) "We have been pressed to consider that the appellant may be seriously prejudiced if he is not heard in the proceedings before the Arbitrator. It is said it may well be that behind his back an order will be made which may affect him adversely. We have accordingly been asked to allow the appellant's prayer to be represented in the proceedings in protection of his interest, if not in advancement of the claim to compensation. This is, as we have said an altogether new position. It was never urged at any stage that the appellant wanted to be heard merely in protection of his interest, and not in furtherance of his claim for compensation. Sitting in Writ appeal, we must decline to entertain the prayer and refrain from expressing any opinion on the merits of such application if and when made before the Arbitrator."

10. In the meantime Mr. A.K. Das had ceased to be Arbitrator and new Arbitrator, namely. Mr. M.K. Roy was appointed in his place and the reference in the matter of the claim made by heirs and legal representatives of Kanhayalal Kanodia Case No. 210 of 1961 was placed before him.

11. The petitioner appears to have drawn inspiration from the observations made by the Appeal Court in F.M.A. 11 of 1962, hereinbefore quoted, and made an application before the Arbitrator for his addition as a party to the Reference, under the provisions of Order 1, rule 10(2) of the Code of Civil Procedure. The Arbitrator rejected the application on the following grounds, namely, (i) that Order 1, rule 10, of the CPC contemplated addition of party either by the Court suo motu or on the application of either party to a proceeding but did not contemplate addition of party on the application of the party desiring addition (ii) "all the questions in the suit", as used in order 1, rule 10(2), could only be questions as between parties to the litigation and did not mean that all persons who have a claim or are likely to have a claim should be made parties; (iii) that the petitioner did not challenge the award made by Mr. Trivedi in the reference obtained by him (Case No. 113 of 1944) for long years and it was idle for him now to contend that he would be prejudiced, if he was not made a party to reference obtained by the Kanodia claimants; (iv) that under the notification appointing him as Arbitrator in one case, he had no power to add as a party a person who was a claimant in a different reference case.

12. Aggrieved by the order, the petitioner has moved this Court, under Article 226 of the Constitution, inter alia, for the quashing of the order.

13. Mr. Provat Kumar Sen Gupta, learned Advocate for the petitioner contended with great emphasis that the Arbitrator was wrong in coming to the conclusion

that Order 1, rule 10 (2) of the CPC would not permit the addition of the petitioner as a party on his own application. Mr. Sen Gupta may be technically right in this contention. In interpreting Order 1, rule 10(2) of the Code, the construction should be liberal and that attempt should always be made to make parties all persons who may be necessary in order that there might be a final and complete adjudication of points involved in the suit or proceeding. But this argument does not take the petitioner very far.

14. The question is whether the petitioner is a necessary party to the reference case of the Kanodia claimants and whether in his absence the points involved in the case may be adjudicated upon. It is beyond dispute that in the present reference case, the claim of the Kanodia claimants only may be adjudicated upon. That claim is based on the contention that the requisition caused them loss of income or deprivation of possession. They are not concerned with the question whether the requisition caused loss to the petitioner as well. It is for the Kanodia claimants to prove how much loss in income the requisition caused to them or what sort of possession they were deprived of thereby. On such proof will rest their claim to compensation. The claim of the petitioner, if any, need not be done into the case of Kanodia claimants, which the Arbitrator has to try. That is a different cause of action. It is well-settled that a party should not be added to a proceeding so as to introduce quite a new cause of action. The petitioner is trying to have his cause of action, if any, tagged to the cause of action of the Kanodia claimants. That should not be permitted. If the petitioner could claim a share in the compensation, which Kanodia claimants may get, that might have made the position different. But the petitioner's case appears to be that he was holding the studio rooms under the Kanodia claimants as hirer of the same, on payment of rent and was making considerable income therefrom. The claim of Kanodia claimants is that they were owners of the studio and were making income therefrom. The two claims are different. The petitioner appears to have no share in the compensation which the Kanodias claim. His is a different claim. There is no reason why he should be added in the reference obtained by the Kanodia claimants.

15. Then again, the claim made by the petitioner, in the reference obtained by him (Case No. 113 of 1944) failed before Mr. R.S. Trivedi. He did not appeal against the award. The Kanodia claimants challenged the award, by an appeal to this Court, in so far it dismissed their claim. The decree passed in that appeal, on the language used, did not operate also to the benefit of the petitioner. If the Kanodia claimants had not appealed and succeeded, the petitioner might have left the nil award in his case undisturbed. Now, that the Kanodia claimants have succeeded, the petitioner did not automatically become a co-sharer therein.

16. Further, the reference which is pending before the present Arbitrator, arises out of the claim of the Kanodia claimants. Normally, the claims of others cannot be adjudicated there, unless of course the others also have a share in the compensation claimed by the Kanodia claimants. I have already held that the

claim of the petitioner rests on a footing different from the footing of the claim of the Kanodia claimants. Therefore, the Arbitrator rightly refused to add the petitioner as a party to the reference obtained by the Kanodia claimants.

17. Also, it was contended before me that by reason of reversal of the award of Mr. R.S. Trivedi, by this Court in the appeal preferred by the Kanodia claimants, the entire award become non-existent, including the portion governing the claim of the petitioner and therefore, the reference (namely Case No. 113 of 1944) obtained by the petitioner must be deemed to be pending. I need not decide this point. If that is so, the petitioner may ask the respondent State Government to place the reference before an Arbitrator. But that objective he cannot achieve by trying to be added as a party in the reference case of the Kanodia claimants namely, Case No. 210 of 1961.

18. It was lastly contended that the petitioner may be prejudiced by his absence in reference Case No. 210 of 1961. I do not find any justification for this contention. The two claims are separate, although concerning the same requisition. Nothing contained in the award made in respect of the claim of Kanodia claimants should prejudice the claim of the petitioner, if he has any at all surviving at this stage.

19. For the reasons aforesaid, nothing calls for my interference in this Rule. The Rule is discharged. I do not make any order as to costs. Let the records be sent down as early as possible.