
(2011) 06 KL CK 0140
In the High Court Of Kerala
Case No : M.F.A. (Forest) No. 123 of 2011

Madhavan

APPELLANT

Vs

Principal Secretary and Another

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 152

Constitution of India, 1950 — Article 226, 227

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8, 8A

Citation : (2011) 3 ILR (Ker) 361 : (2011) 3 KLJ 622 : (2011) 8 RCR(Civil) 1477

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : Jeena Joseph and G.D. Panicker, for the Appellant;

Judgement

Basant, J.—Is the dismissal of an application under Order 9, Rule 9 CPC by the Forest Tribunal appealable u/s 8A of the Kerala Private Forests (Vesting and Assignment) Act? This is the short question of law raised in this appeal.

2. This appeal arises from the impugned order under which an application for restoration of an original application was dismissed by the Forest Tribunal, Kozhikode.

3. This proceedings has had a very chequered career so far. O.A. No. 40/99 was filed by the Appellant herein before the Forest Tribunal. That O.A. was initially dismissed. The Appellant came to this Court with an appeal and by judgment dated 10-6-2008, the matter was remanded to the Forest Tribunal with directions for fresh disposal. Subsequently, on 17-10-2008, the appeal was dismissed for default. It was restored later subject to appropriate conditions regarding payment of cost.

4. The matter came up again for consideration of the Forest Tribunal on 21-11-2009. The O.A. was again dismissed for default. The Appellant filed I.A. 397/09 before the Forest Tribunal for restoration. That I.A. also happened to be

dismissed for default. The same was however, restored as per order dated 18-6-2010 in I.A. 17/10.

5. Thereafter, the Tribunal took up I.A. 397/09 for consideration and proceeded to pass the impugned order dismissing that I.A.O.A. No. 40/99 thus stands dismissed for default.

6. The Appellant has now come before this Court with the grievance that the Forest Tribunal did not consider I.A. 397/09 properly. According to the Appellant, his absence before the Tribunal on 21-11-2009 was on account of reasons beyond his control and in these circumstances the Forest Tribunal must have taken a lenient view. The impugned order of dismissal is hence not justified; the same may be set aside and the Appellant may be given an opportunity to further prosecute O.A. No. 40/99 pending before the Forest Tribunal. This, in short, is the contention of the Learned Counsel for the Appellant.

7. The learned Special Government Pleader (Forest) has entered appearance on behalf of the Respondents. The learned Government Pleader submits that there is no justifiable reason warranting interference with the impugned order. The dismissal of the O.A. on 21-11-2009 was perfectly justified. At any rate, that discretion exercised by the Forest Tribunal does not warrant interference at all. In these circumstances, it is prayed that this appeal may be dismissed.

8. The learned Special Government Pleader for the Respondents raises a further contention that no appeal u/s 8A of the Kerala Private Forests (Vesting and Assignment) Act, 1971 is maintainable against the impugned order. In as much as the impugned order does not finally decide the question raised u/s 8 of the Act, the same cannot be reckoned as a final order. A final order alone can be appealed against u/s 8A of the Act. Hence the learned Government Pleader contends that the appeal against the impugned order is not legally maintainable.

9. In support of this contention, the learned Government Pleader places reliance on the decision in *Muhammadvutty v. Forest Tribunal* 1978 KLT 619 and *Varkey v. State of Kerala* 1980 KLT 632 (F.B.) We have gone through those decisions. The decisions to which those precedents relate were not final orders passed by the Tribunal. The orders impugned in those appeals were only interim orders and not final orders. In *Muhammadvutty's* case (supra), the learned Judges were concerned with an interim order passed by the Tribunal refusing to remit the report of a Commissioner for certain additional details. That order was held to be not a final order which alone can be challenged u/s 8A. In *Varkey's* case (supra) the Full Bench was considering the maintainability of an appeal against an order praying for an amendment u/s 152 Code of Civil Procedure. The learned Judges held that the said is not a final order and hence it was held that, that order is not appealable u/s 8A. It was observed that an order which is not a final order can be challenged only under Articles 226 and 227 of the Constitution.

10. We deem it necessary to extract Section 8A(1) of the Act:

The Government or any person objecting to any decision of the Tribunal may, within a period of sixty days from the date of that decision, appeal against such decision to the High Court.

(Emphasis Supplied)

11. A reading of the section shows that an appeal lies against any decision of the Tribunal. The two precedents referred above only indicate that the right of appeal cannot be invoked in respect of an order which is purely an interim order. It is trite from those precedents that orders which are only steps in aid passed by the Court before final decision is rendered cannot be reckoned as decisions which are appealable u/s 8A(1).

12. The short question is whether the impugned order is such an order that no appeal can be taken under the Act to challenge the impugned order. The impugned order puts an end to the claim raised by the Appellant. In that view of the matter, the order is certainly a final order which forecloses the right which the Appellant has u/s 8 of the Act to get his dispute settled/resolved. In that view of the matter we are certainly of the opinion that the impugned order is not an interim order or interlocutory order and is a final order setting at rest, the option of the Appellant to get a reasoned decision u/s 8. The same must be reckoned as an order falling within the sweep of expression of "any decision" in Section 8A of the Act. We do not, in these circumstances, find any merit in the contention that the impugned order is not appealable.

13. The only question that remains is whether sufficient reason has been shown to set aside the order dismissing the appeal for default passed on 21-11-2009. We must say that we are not too impressed with the course of conduct adopted by the Appellant. Right through we find that there has been lethargy and contumacious lapses on the part of the Appellant. We note that this appeal has itself been filed with a petition to condone the delay of 110 days. We have condoned the delay today without imposing any conditions as we were proceeding to take up the appeal itself for hearing and disposal.

14. The preference of every Court, for a considered decision on merits to a decision on default is well-known. It need not be over emphasized. In that view of the matter, we are of the opinion that the Appellant can be given a further opportunity to prosecute O.A. 40/99 subject to appropriate conditions on very heavy terms. We do see the lapses on the part of the Appellant but we do feel that, in spite of such lapses, the Appellant can be afforded the luxury of a further opportunity subject to appropriate terms.

15. In the result:

(a). This appeal is allowed subject to conditions.

(b). The impugned order shall stand set aside and the Forest Tribunal shall dispose of O.A. No. 40/99 afresh in accordance with law on condition that the Appellant deposits an amount of Rs. 10,000 as cost to the High Court Legal

Services Authority and produces receipt thereof before the Forest Tribunal on or before 1-8-2011.

(c). The Forest Tribunal shall call O.A. No. 40/99 on 2-8-2011 (or on the next sitting of the Tribunal at Kozhikode). On that day, if receipt evidencing payment is not produced, the impugned order shall stand revived and further proceedings shall stand closed. The Tribunal shall record that fact in the order sheet.

(d). If the deposit is made and receipt is produced, the Tribunal shall dispose of the case as expeditiously as possible, at any rate, within a period of three months from 2-8-2011. Compliance shall be reported to this Court.

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