

(1994) 02 MAD CK 0026

In the Madras High Court

Case No : C.M.P. No's. 1605, 1769 and 1771 of 1994

Managing Director, Thanthal Periyar Transport Corpn.
Villupuram

APPELLANT

Vs

K.C. Karthiyayini

RESPONDENT

Date of Decision : 16-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 22, Order 41 Rule 11, Order 41 Rule 22, Order 41 Rule 27(1), Order 41 Rule 33
Defence of India Act, 1938 — Section 19(1)
Limitation Act, 1963 — Article 116, 5
Madras Hindu Religious Endowments Act, 1926 — Section 84(1)
Motor Vehicles Act, 1939 — Section 110D
Motor Vehicles Act, 1988 — Section 173
Trade Marks Act, 1999 — Section 76

Citation : (1995) 1 ACC 132 : (1995) ACJ 594 : AIR 1995 Mad 102 : (1994) 2 LW 54

Hon'ble Judges : Srinivasan, J;Abdul Hadi, J

Bench : Division Bench

Advocate : G. Muniratnamy, for the Appellant;

Judgement

Abdul Hadi, J.—In all these civil Miscellaneous Petitions one common question of law is involved and hence they are disposed of together.

These civil miscellaneous petitions are for stay of all further proceedings pursuant to the awards passed by the Motor Accidents Claims Tribunals

in three different Motor Accidents Claims Tribunals in three different motor Accidents Claims original petitions, pending disposal of three different

civil miscellaneous petitions for excusing the delay in filing the respective civil miscellaneous appeal against the awards passed in the respective

motor accidents claims original petition. The question is whether these stay petitions are maintainable in the teeth of Order 41, Rule 3A (3) of the

Code of Civil Procedure, in other words, whether Order 41, Rule 3A of the CPC is applicable to such civil miscellaneous appeals filed in this

Court u/s 110-D of the Motor Vehicles Act, 1939 or u/s 173 of the Motor Vehicles Act, 1988.

2. Order 41, Rule. 3A(3) reads as follows:--

When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by

affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such

period.

Order 41, Rule 3A(3) runs as follows:--

Where an application has been made under sub-rule (1), the court shall not make an order for the stay of execution of the decree against which

the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.

Thus, where in an appeal arising out of a regular suit, there is delay in filing the said appeal and an application is filed for excusing the said delay, the

abovesaid sub-rule (3) of Order 41, Rule 3A, C.P.C. precludes the court from granting an interim stay of execution of decree, until the Court, after

hearing under Rule 11, of Order 41, C.P.C. admits the appeal for being heard. Therefore, in short, the question to be decided is, whether the same

rule would apply when an appeal is filed against the award passed by the Motor Accidents Claims Tribunal under the Motor Vehicles Act.

3. Respective learned counsel in the above civil miscellaneous petitions made the following submission:-- The provisions of Order 41, Rule 3A,

C.P.C. will not apply to the abovesaid appeals under the Motor Vehicles Act. The decisions in Gouse Bi Vs. Salima Bi, ; National Insurance Co.

Ltd Vs. V. Vasantha and Others, , Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, ; R. Govindarajulu Naidu

and Another Vs. S. Dharman and Another, , Nirmal Chaudhary Vs. Bishambar Lal, and State of Assam Vs. Gobinda Chandra Paul, were relied

on by them.

4. We have considered the abovesaid submission. We may first of all state the relevant provisions under which such appeals are filed under the

Motor Vehicles Act against the awards passed by the Motor Accidents Claims

Tribunal. Under the old Motor Vehicles Act, 1939, Section 110D

is the relevant provision, which runs as follows:--

Appeals: (1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may within ninety days from the

date of award, prefer an appeal to the High Court:

Provided that the High Court may entertain the appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was

prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal, if the amount in dispute in the appeal is less than two thousand rupees.

The corresponding section in the Motor Vehicles, Act, 1988 is Section 173. There is no difference between the two provisions except the

following :--

(1) Under Sec. 173 of the new Act, there is one more proviso in clause (1), by which it is provided that such an appeal shall not be entertained

unless the appellant deposits Rs. 25,000/- or 50% of the amount so awarded, whichever is less, in the manner directed by the High Court. (2)

Under the present Sec. 173(2), if the award amount in dispute is less than Rs. 10,000/- no appeal shall lie. (The provision under the old Act was

Rs. 2,000/-instead of the abovesaid Rs. 10,000/-). Anyway, apart from what is stated above, no other procedure relating to the abovesaid appeal

to the High Court has been provided in the Motor Vehicles Act or the Rules framed thereunder. Particular mention may also be made that even

with reference to the power of granting stay of execution of the award, pending an appeal, which has been filed in time, nothing has been

specifically provided for, under the abovesaid Act or the rules thereunder and it is needless to say that the High Court, when it grants stay in such

an appeal under the Motor Vehicles Act grants stay only pursuant to O.41, R. 5. C.P.C.

5. Further, it is by now well settled that once the matter reaches the High Court, all provisions of CPC would be applicable and the High Court in

dealing with such appeals is not in the position of a Special Tribunal, but hears the matter as the original appellate court and hence the provisions of

CPC are applicable before it. A Bench of this Court has also held so in The Union Co-operative Insurance Society Ltd., Madras Vs. Lazarammal

Ravel and Others, ., In the said decision, this Court was considering whether cross-objections could be filed under O. 11, R. 22, C.P.C. in the

appeal filed to this Court against the award passed by the Motor Accidents Claims Tribunal. There, this Court observed thus (at p. 380) :--

As we pointed out earlier, S. 110-D of the Motor Vehicles Act contemplates an appeal to the High Court. Once an appeal is entertained by this

Court, all the rules in the CPC would be applicable, to such an appeal, inasmuch as no other procedure is prescribed under the said Act. That

means, O.41, R.22, C.P. Code would be applicable and the respondent in an appeal would be entitled to present a memorandum of cross-

objections as provided under the said Rules"".

5-A. Another Division Bench of this Court in Kullappan Vs. Meenakshi, also applied O.41, R.27(1)(b), C.P.C. in the appeal under S. 110-D of

the Motor Vehicles Act. The relevant observation there is as follows (at p. 178) :--

We therefore, receive the said document as additional evidence invoking the power under O.41, R.27(1)(b), C.P. Code, and mark the said

policy in the appeals as Ex. R-3"".

5-B. Even the decision in R. Govindarajulu Naidu and Another Vs. S. Dharman and Another, referred to above as cited by counsel has held in the

same way. Actually, the said decision does not support the contention of the petitioner's counsel. There, the question was whether O.44, R. 1,

C.P.C. is applicable to an appeal against the award by the Claims Tribunal. Answering the said question in the affirmative, this Court observed as

follows (at pp. 265, 266, 268) :--

This court is not constituted as a special Tribunal to hear appeals under the Act. Section 110-D merely states that any person aggrieved by an

award of the Claims Tribunal may within the time prescribed prefer an appeal to the High Court, and the matter is left there. When the statute

directs an appeal to an ordinary civil Court, without in any manner circumscribing the practice, procedure and powers of such court as a civil

appellate court, the court will have to deal with the appeals with all the trappings and powers as an ordinary civil court of appeal. This is the

fundamental rule that has been uniformly countenanced and applied by courts..... Thus, we find that uniformity it has been countenanced that the

High Court, while hearing an appeal under the Act, exercises its ordinary

appellate powers and should follow its practice and procedure as are normally attributable to it as an ordinary appellate court; and in the absence of any circumscription or regulation of the said powers, the rules of practice and procedure, and power as per the provisions of the Code can be legitimately invoked for the purposes set out therein in the matter of dealing with such an appeal. Order 33 of the Code deals with institution of proceedings by indigent persons. Order 44 deals with appeals by indigent persons and it contemplates that appeals by indigent persons shall be dealt with in the same manner as institution of original proceedings by indigent persons. In this view, we have to hold that it will be competent for the appellants to invoke the aid of O.44 and thereby O.33 of the Code".

No doubt, the learned counsel who relied on this decision contends that the word "trappings" used in the above passage would mean only "embellishment" or "adornment" and so, according to him, though the other provisions of Civil Procedure Code, which give powers to this Court may be applicable, the abovesaid provision in O.41, R. 3A(3), which restricts its power to grant stay will not be applicable. There is absolutely no merit in this argument. There is absolutely no means "characteristic accompaniments" and, therefore, there can be no doubt that all the provisions of CPC are applicable to the abovesaid appeals under the Motor Vehicles Act.

5-C. Even the other decision cited by the same learned counsel, viz., National Insurance Co. Ltd Vs. V. Vasantha and Others, which is again a decision of a Division Bench of this Court does not support the argument. There also, the question was, whether O.41, R. 33, C.P.C. could be applied to the abovesaid appeals under the Motor Vehicles Act. The Division Bench only held that O.41, R. 33, C.P.C. could be invoked though it held that the facts in that case do not warrant the application of the said rule.

5-D. No doubt, the Bench referred to the above referred to Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, where it appears the following observation has been made (at p. 311) :--
It cannot, therefore, be contended that once the appeal reached the High Court all the provisions in CPC applicable to appeals to the High Court are automatically attracted.

For making this observation, it appears the Andhra Pradesh High Court purported to rely on a Full Bench decision of this Court in (Delhi)

Venkatarama Doss Pantulu Vs. (Delhi) Bheema Rao, . But, we find that (Delhi) Venkatarama Doss Pantulu Vs. (Delhi) Bheema Rao, does not lay

down such a proposition. It has only held that an order passed by the District Judge on an application made to the District Court to set aside the

decision of the Hindu Religious Endowments Board under Sec. 84(1) of the Madras Hindu Religious Endowments Act (2 of 1927) is not

appealable to the High Court, because, although that order complies with all the other requirements of the definition of a ""decree"", it cannot be a

decree inasmuch as an application cannot be the commencement of a suit and without a suit there cannot be a decree. In our view (Delhi)

Venkatarama Doss Pantulu Vs. (Delhi) Bheema Rao, cannot at all lead to the proposition laid down in the above referred to Andhra Pradesh

decision. Further, the said observation of the Andhra Pradesh High Court is contrary to several decisions rendered by the Supreme Court and the

Privy Council.

6. In this connection it is worth mentioning the decision by the Supreme Court in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros.

Ltd. (J. and P. Coats Ltd., Assignee), , where it observed, dealing with an appeal to the High Court from a decision of the Registrar, under S. 76

of the Trade Marks Act, thus (at pp. 359, 360) :--

The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the

practice and procedure of that Court, This rule was very succinctly stated by Viscount Haldane L.C. in "National Telephone Co. Ltd. v. Post

Master General", 1913 AC 546 in these terms :--

"When a question is stated to be referred to an established Court without more, it in my opinion, imports that the ordinary incidents of the

procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches"....Section 76, Trade Marks Act

conferred a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized as such of the appellate

jurisdiction conferred by S. 76, it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction....."".

6-A. Further, in Collector of Varanasi Vs. Gauri Shankar Misra and Others, also the Supreme Court reiterated the proposition laid down in

National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), in the context of an appeal to the High

Court under S. 19(1)(f) of the Defence of India Act, 1938. The relevant observations therein are as follows (at pp. 386, 387) :--

We were informed that neither the Act nor the rules framed thereunder prescribe any special procedure for the disposal of appeals under S. 19(1)

(f). Appeals under the provision have to be disposed of just in the same manner as other appeals to the High Court. Obviously after the appeal had

reached the High Court, it had to be determined according to the rules of practice and procedure of that Court. The rule is well settled that when a

statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that

Court".

7. Counsel for one of the petitioners also contends that Order 41, Rule 3-A(1) gives a further right to claim condonation of the delay, in addition to

such right u/s 5 of the Limitation Act and that O.41, Rule 3-A(3) will have application only if the said Sec. 5 is invoked. According to him these

petitions to condone delay are filed under Sec. 173 of the Motor Vehicles Act and not under Sec. 5 of the Limitation Act. In this connection, he

relied on Nirmal Chaudhary Vs. Bishambar Lal, and State of Assam v. Gobinda Chandra Paul (AIR 1991 Gauhati 104). The observation in

Nirmal Chaudhary Vs. Bishambar Lal, is no doubt as follows (at p. 31):--

The newly added provision of R.3-A of O.41 in the Civil P. C. gives an additional right to a litigation to claim condonation at the time of

presenting the appeal".

In State of Assam v. Gobinda Chandra Paul AIR 1991 Gan 104 also similar view appears to have been expressed in the following words (at p.

110) :--

Besides, this rule is not in derogation of S. 5 of the Limitation Act in fact, it is in addition to that".

But, we are unable to subscribe to this view, since O.41, R. 3-A, C.P.C. has only been inserted by the Amending Act, 1976 in order to prescribe

the procedure for securing the final determination of the question as to limitation even at the stage of admission of the appeal. The rule does not

prescribe the period of limitation for an appeal. The period of limitation is

provided only under Art. 116 of the Limitation Act, 1963 in respect of appeals and it cannot be said that O. 41 Rule 3-A gives any additional right to litigants to claim condonation. Moreover, condonation of delay is not a matter of right. The litigant who comes to court after the prescribed period of limitation is bound to satisfy the Court that he has sufficient cause for the delay.

8. We may also point out that a Full Bench decision of the Karnataka High Court in *K. Chandrashekhara Naik v. Narayana* (AIR W75 Kant 18)

held that in an appeal under S. 110-D of the Motor Vehicles Act, 1939, cross-objections are maintainable under O.41, R.22, C.P.C. in the said

decision, the Karnataka High Court relied on the above referred to Supreme Court decisions and other decisions.

9. Once it is held that the provisions of Rules 22, 27 and 33 of Order 41, C.P.C. are applicable, there is no reason to exclude Rule 3-A thereof. In

the result, we hold that these civil miscellaneous petitions are not maintainable in view of Order 41, R.3-A(3), C.P.C. and accordingly we dismiss

the same.

10. Petition dismissed.