

(1985) 02 KL CK 0015
In the High Court Of Kerala
Case No : W.A. No. 61 of 1985

Mayilvahanam Roadlines

APPELLANT

Vs

Mayilvahanam Travels and Others

RESPONDENT

Date of Decision : 13-02-1985

Acts Referred:

Kerala High Court Act, 1958 — Section 5

Citation : AIR 1986 Ker 27

Hon'ble Judges : K. Bhaskaran, Acting C.J.; S. Padmanabhan, J

Bench : Division Bench

Advocate : K.P. Dandapani, Sumathi Dandapani, Jaju Babu, Mukesh Raman and C.A. Sreekantan, for the Appellant; Govt. Pleader and P. Raveendran, for the Respondent

Judgement

Bhaskaran, Ag. C.J.

1. This appeal is directed against the judgment in O.P. 509 of 1985 dated 21-1-1985 (reported in 1985 Ker LT 178, and is at the instance of the 4th respondent therein. In the writ petition the prayer was for quashing Exts.P7 and P8 by the issue of a writ of certiorari. In this judgment parties are referred to as they were arrayed in the Original Petition. Ext.P7 is the copy of the order dated 9-1-1985 in M. P.No. 49 of 1985 in M.V.A.A. 12 of 1985 passed by the 3rd respondent, the State Transport Appellate Tribunal, Ernakulam. The application before the Tribunal was to direct the first respondent, the Regional Transport Authority, Malapuram, to issue a temporary permit for 20 days or in the alternative to direct the second respondent, the Secretary to the R.T.A. Malapuram, to consider the application for temporary permit for 20 days at the next meeting of the second respondent, the R.T.A. The 3rd respondent, the State Transport Appellate Tribunal, passed an order directing the second respondent to issue the permit forthwith. It is aggrieved by this Order passed by the S.T.A.T. in an interlocutory application that the writ petition was filed by the petitioner. Ext.P8 is the order passed by the 3rd respondent, the S.T. A.T., in M.P.No. 68 of

1985 in M.V.A.A. No. 12 of 1985. The 3rd respondent, the S.T.A.T., passed an order declining to vacate the order passed for the issue of a temporary permit as an interim measure. These two orders, as already noticed, were under challenge in the writ petition. The learned Judge disposed of the writ petition stating as follows :

"Though I am inclined to take the view that interim direction of the Tribunal in this case is not in order, question is whether this Court should intervene in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution. The impugned order is only an interlocutory order. Ordinarily in the case of such an interlocutory order, particularly of a very limited effect and which does not prejudice the legal rights of any other, this Court would be reluctant to intervene. For this reason and this reason alone I refrain from interfering with the interim order of the Tribunal. I also make it clear that the operational experience which the 4th respondent may gain the strength of any temporary permit that may be issued shall not be counted in its favour for any purpose. The Original Petition is thus disposed of but in the circumstances without costs."

The appellant, as already stated, is the 4th respondent in the original petition. The counsel for the appellant (4th respondent) submitted that the disposal of the writ petition by the learned Judge with the observation that "the operational experience which the 4th respondent may gain on the strength of any temporary permit that may be issued shall not be counted in its favour for any purpose" would seriously prejudice the appellant-4th respondent in the matter of qualification for obtaining permits in the future. She also contended that certain observations of the learned Judge in regard to the first or second respondent granting temporary permits for 20 days, or the 3rd respondent directing the first respondent or second respondent to grant temporary permits, for 20 days, without properly considering the implications of such observations, which were really not necessary for the disposal of the case, would seriously prejudice the prospect of the appellant obtaining permits, based on merit and qualifications, in future.

2. On behalf of the first respondent a preliminary objection to the maintainability of the appeal was raised. The submission made by the counsel was that inasmuch as the appeal is directed against the observations in the judgment appealed against, not against the judgment as such, the appeal is not maintainable u/s 5(i) of the Kerala High Court Act, 1958. Section 5(i) of the Act reads as follows :

"5. Appeal from judgment or order of single Judge : An appeal shall lie to a Bench of two judges from -

- (i) a judgment or order of a single judge in the exercise of original jurisdiction; or
- (ii) a judgment of a single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a subordinate Court; or

(iii) a judgment of a single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a subordinate Court, if the Judge who passed such judgment certifies that the case is a fit one for appeal."

The decision of the Full Bench of this Court in *State of Kerala Vs. R. Sudarsan Babu and Others*,) was cited by the counsel in support of his contention. What came up for consideration before the Full Bench in that, what is known as "Press Pass Case", was whether against an interlocutory order passed in a writ petition an appeal would lie. It was in that context that Section 5 of the Act was quoted, and the true purport and scope thereof were examined. We are afraid, there is nothing in that decision which suggests that against the final disposal of a matter, to the extent objected to, an appeal would not lie.

3. One other decision of the Supreme Court relied on by the appellant's counsel is *Smt. Ganga Bai Vs. Vijay Kumar and Others*, . We have carefully gone through the observations contained in that judgment; and we are of the view that nothing said in that decision would go to show that there is a total bar against an appeal from an order or judgment in the nature of the one appealed against in this case. That was a case where the plaintiff-decree-holder had obtained a decree for the money covered by the mortgage deed executed by defendants 1 and 2, the first defendant being the kartha and the second defendant being his son of a Hindu Joint Family. The suit was filed against defendants 1 to 3, the 3rd defendant being another son of the first defendant, who was not a party to the mortgage transaction. The trial Court found that there was no legal necessity for the execution of the mortgage deed, and that it was tainted by immorality also. A decree was granted for the sale of half the property mortgaged, which fell to the share of the first defendant at the time of the execution of the mortgage deed, dismissing the suit as against defendants 2 and 3, on whom the mortgage was found to be not binding. Aggrieved by "certain observations in the judgment, defendants 2 and 3, as against whom the suit was wholly dismissed, filed an appeal, not against the judgment as such but, against certain observations contained in the judgment, paying a Court fee of Rs. 30/- for a declaration that the partition was sham and colourable. "Being aggrieved by the finding given in the judgment and the decree..... it is humbly prayed that findings given by the learned Judge in para 34 of his judgment may kindly be set aside, and instead the partition deed dated 11-1-1956 may kindly be declared as genuine" so ran the Memorandum of Appeal. The Supreme Court held that the provisions of Sections 96, 100, 104(1), 105 read with O. 43, Rule I of the Code show that an appeal would lie only as against a decree or an order passed under rules from which an appeal is expressly allowed by Order 43, Rule 1. No appeal would lie against a mere finding for the simple reason that the Code did not provide for any such appeal. It did not, however, go to the extent of saying that it is only against the dismissal of the suit or allowing of the suit simpliciter that an appeal would lie. It only went to the extent of saying that where the observations or directions did not in any way affect the parties, there need not be an appeal, as

the principles of res judicata would not operate in such cases the question in issue not having been finally decided. It specifically left open the correctness of the view taken by the Calcutta High Court in Hara Chandra Das v. Bhola Nath Das ILR (1935) Cal 701 that in appropriate cases, though not provided by the appeal provisions, to advance the cause of justice an appeal could be permitted.

4. In this case the appellant's definite case is that the Original Petition has been "disposed of with directions and observations, which are bound to be respected by respondents 1 to 3, and which are likely to influence them in the decision-making process, unless got corrected in and by appeal. Going through the judgment appealed against, we find that this is not a case where the Original Petition was dismissed on merits, but disposed of with observations in paras 5 and 6, and the direction in para 7 "that the operational experience which the 4th respondent may gain on the strength of any temporary permit that may be issued shall not be counted in its favour for any purpose", the reason for not allowing the Original Petition, according to the learned Judge, being that it was just against an interlocutory order in an appeal pending before the 3rd respondent, the S.T.A.T. In our considered view, a party aggrieved by the disposal of an Original Petition with such observations and directions by a single Judge of the High Court in the exercise of the original jurisdiction is entitled to file an appeal therefore before a Bench of two Judges invoking the provisions of Section 5(i) of the Kerala High Court Act.

5. It is true that the principles of res judicata applicable to proceedings under the CPC in terms of Section 11 thereof, might not be applicable to proceedings before Tribunal as such; all the same it has been held in Govindan Gopalan Vs. Raman Gopalan, that -

"The rule of res judicata in so far as suits inter se are concerned is contained in Section 11 of the Code of Civil Procedure. But even in suits decisions made by quasi-judicial tribunals can be res judicata based on general principles provided such tribunals had the jurisdiction to decide the issues involved. A decision of a Court of special jurisdiction will be res judicata in a Court of general jurisdiction provided the decision was within the competence of the former Court."

The observation of the High Court in a judgment in a writ petition between the parties is likely to influence the decision of the Tribunal which has to decide the same or identical issues between the parties.

6. The counsel for the first respondent also cited certain other decisions, namely, The Province of Bombay Vs. Western India Automobile Association, ; Hafiz Mohammad Vs. Banshidhar Nandkishore, ; and Pateshwari Din v. Sarju Dass, AIR 1938 Oudh 18, which, in our view, are not strictly applicable to the facts of the present case.

7. We do not consider it necessary to go into the merits of the case in respect of matters which are now pending before the S.T.A.T., and to some extent before the R.T.A. also. We are of the opinion that the observations regarding the

propriety of the S.T. A.T. giving directions regarding the grant of temporary permit and the qualification based on the experience that might be gained on the basis of the permit granted by the R.T.A. were not necessary for a proper and complete adjudication of the matter which came up before the Court for decision. In that view, we would make it clear that the S.T.A.T. and the R.T.A. are to consider the matters which are pending before them, or coming before them in accordance with law untrammelled by the observations and directions in paras 5, 6 and 7 of the judgment appealed against to which reference has already been made.

The writ appeal is disposed of in the above terms, and clarifying the position as aforesaid. There will be no order as to costs.

Issue carbon copy of the judgment to the parties on usual terms.