

(2000) 12 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 151 of 2000

M/s G.M.Pampori

APPELLANT

Vs

State of J.and K

RESPONDENT

Date of Decision : 23-12-2000

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 17, 39
Jammu and Kashmir Civil Procedure Code, 1977 — Section 96

Citation : AIR 2001 J&K 18 : (2001) SriLJ 18

Hon'ble Judges : R.C.GANDHI, J and O.P.SHARMA, J

Bench : Division Bench

Advocate : M.A. Qayoom, M. H. Attar, AAG., Advocates appearing for the Parties

Judgement

O. P. Sharma, J.—This letters patent appeal is against the order dated 692000 vide which a learned single Judge has admitted appeal NO.

52/2000 in which the respondents herein have challenged the judgment and decree passed in terms of the award filed by the arbitrator appointed

under the Jammu and Kashmir Arbitration Act, 1945.

2. The appellant instituted a suit for recovery of Rs. 12,11,548/ against the respondents in December 1994 which was transferred to the file

District Judge, Srinagar vide this Court order dated July17, 1995. The District Judge vide order dated 841996 appointed the Director,

Agriculture, Kashmir, as the sole arbitrator for the resolution of the dispute. The award was made rule of the Court vide judgment and decree

dated 452000 passed by the District Judge.

3. RespondentState and other functionaries who were defendants in the suit challenged the judgment and decree dated 452000 passed by the

District Judge by filing the aforesaid civil first appeal. The appellant herein

resisted the maintainability of the appeal on the ground (i) that it is barred u/S. 17 of the Arbitration Act and (ii) that it being a consent decree, the appeal is not maintainable u/s 96 of the CPC. The learned single Judge rejected all these objections and admitted the appeal to hearing by the impugned order.

4. Mr. Qayoom learned counsel appearing for the appellant contends that the learned single Judge erred in admitting the appeal when it is

specifically barred by S. 17 of the Arbitration Act. He next argued that the objection to the maintainability of the appeal against a consent decree

has been wrongly rejected. Since no objections against the award being made rule of the Court were filed on behalf of the State, therefore, the

appeal was not maintainable in view of the law laid down in Nilkantha Sidramappa Ningeshetti v. Kashinath Somanna Ningashetti AIR 1962 SC

666. Mr. Attar, learned Addl. Advocate General has on the other hand argued that letters patent appeal is not maintainable against the impugned

order which has been passed while admitting the appeal filed under (sic) the Arbitration Act.

Since admission of the appeal does determine rights of the parties the appeal, argued Mr. Attar, is even otherwise not maintainable. His further

argument is that the impugned order is not appealable in view of the law, propounded in M/s. New Kenilworth Hotel v. Orissa State Finance

Corporation AIR 1997 SC 978 and Hemlata Pande v. Sukuri Dibya (2000) 2 SCC 218 and Union of India v. Mohinder Singh and Co. 1971

JKLR 630.

5. An appeal against the judgment and decree passed in terms of the award or orders passed under the Act lies either u/s 17 or S. 39 of the

Arbitration Act and not under the Code of Civil Procedure. This was laid down in Union of India v. Mohindra Supply Co. AIR 1962 SC 256 hold

as below : at page 262263

17. There is in the Arbitration Act no provision similar to S. 4 of the Code of Civil Procedure which preserves powers reserved to courts under

special status. There is also nothing in the expression ""authorised by law to hear appeals from original decrees of the Courts"" contained in S. 39(1)

of the Arbitration Act which by implication reserves the jurisdiction under the Letters Patent to entertain an appeal against the order passed in

arbitration proceedings. Therefore, in so far as Letters Patent deal with appeals against order passed in arbitration proceedings, they must be read

subject to the provisions of S. 39 (1) and (2) of the Arbitration Act.

18. Under the Code of 1908, the right to appeal under the Letters Patent was saved both by S.4 and the clause contained in S. 104 (1), but by the

Arbitration Act of 1940, the jurisdiction of the Court under any other law for the time being in force is not saved; the right of appeal can therefore,

be exercised against orders in arbitration proceedings only u/s 39 and no appeal (except an appeal to this Court) will lie from an appellate order.

19. There is no warrant for assuming that the reservation clause in S. 104 of the Code of 1908 was as contended by counsel for the respondent,

superfluous"" of that its deletion from S.39(1) has not made any substantial difference"", the clause was enacted with a view to do away with the

unsettled state of the law and the cleavage of opinion between the Allahabad High Court on the one hand and Calcutta, Bombay and Madras High

Courts on the other on the true effect of S. 588 of the Code of Civil Procedure upon the power conferred by the Letters Patent.

If the legislature being cognizant of this difference of opinion prior to the Code of 1908 and the unanimity of opinion which resulted after the

amendment, chose not to include the reservation clause in the provisions relating to appeals in the Arbitration Act of 1940, the conclusion is

inevitable that it was so done with a view to restrict the right of appeal within the strict limits defined by S. 39 and to take away the right conferred

by other statutes. The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration

must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and

explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the

previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the

legislature has made a deliberate departure from the law prevailing before the enactment of Act X of 1940 by codifying the law relating to appeals

in S.39"".

So an appeal against the judgment and decree passed in terms of the award

would be only under Arbitration Act and not under the Code of Civil Procedure or letters patent.

6. A similar question came up for consideration before a Division Bench of this Court in Union of India v. Mohinder Singh 1971 JandKLR 630.

Facts of that case were that a single Judge of this Court while declining to grant extension in time to the arbitrator removed him as arbitrator and

asked the parties to choose new arbitrator from the panel of engineers set out in the order. Union of India filed Letters Patent appeal against the

aforesaid order. Relying on the judgment of the Supreme Court in Mohindera Supply Co. AIR 1962 SC 256 (supra) their lordships the Division

Bench held as under :

13. In the aforesaid authority of the Supreme Court their lordships have definitely laid down that the two subsections of S. 39 are manifestly part

of single legislative pattern. By subsec. (1) the right to appeal is conferred against specified orders and against no other orders; and from an

appellate order passed under subsec. (1) no second appeal lies. Before their lordships was, as stated above, the case from the Punjab. The view

was laid down that where a single Judge of Punjab High Court had disposed of an appeal under S. 39 of the Arbitration Act no further right of

appeal was available under clause 10 of the Letters Patent of the High Court against the order of the single Judge. AIR 1954 Punjab 211 (FB) and

AIR 1949 East Punjab 165 were overruled.

14. For the foregoing reasons I am, therefore, of the view that neither under S. 39 of the Act nor under Letters Patent of the State High Court is a

right of appeal available to the appellant in the present case. The appeals being incompetent they are hereby dismissed but without making any

order as to costs.

7. It is settled law that where a single Judge disposed of an appeal filed under S. 39 of the Act no appeal except an appeal to the Supreme Court

lies. It thus follows that letters patent appeal against any order passed by a single Judge hearing appeal under S. 39 is not maintainable. But this is

not the end of the matter in view of a Bench decision of this Court in Managing director v. M/s Syed and Co. 1978 KLJ 255 holding that :

5. On going through the file and also the impugned order we find the case is one in which we should exercise our powers vested under S. 115 of

the Code of Civil Procedure. Section 14 gives statutory right to the parties to arbitration to file their objections to the award filed by the arbitrator.

Under Article 158, thirty days time is prescribed for filing objections to the award. This right of a party cannot be curtailed by an order of the

Court. In the instant case, it appears that the award was filed on 31/12/1975 when the Court issued notice to the parties calling upon them to file

their respective objections to the award. The Court, it seems, hustled through the proceedings, instead of waiting for the statutory period of 30

days it proceeded to pass the impugned judgment and decree on 7/1/1976 i.e. 7 days after the award was filed. The learned Court did not wait for

the objections of the parties. In this way the order that has been passed by the learned Judge has caused prejudice to the appellant.

6) In our view it is a fit case where the aggrieved party would be within its right to invoke the revisional jurisdiction of this Court. We, therefore,

treat this appeal as revision.

In view of this an appeal can be treated as revision if there has been violation of S. 14 of the Act.

8. We may now briefly refer to the grounds on which the impugned order is challenged. These are (i) that the (sic) against a consent decree which

is barred under S. 96 of the Code of Civil Procedure (ii) that the judgment and decree having been passed in terms of the award, the appeal is

barred under S. 17 of the Arbitration Act. Mr. Attar, however, argued that judgment and decree passed by the District Judge is a nullity because

notice of filing of the award in terms of S. 14 of the Arbitration Act has not been issued to the Chief Secretary of the State. He next argued that the

judgment and decree being in excess of the award in as much as the Court has awarded interest at the rate of 15% per annum from the date of

institution of the suit, the appeal lies under S. 17. Since the arbitrator did not award interest the decree challenged in appeal he argued is not in

accordance with the award. Prerogative interest according to the learned counsel could be awarded only under the Interest Act, 1978 (Central)

which is not applicable to the State. In support of this he placed reliance on State of U.P. v. Harish Chandra and Co. (1991) 1 SCC 63 and State

of Orissa v. B.N. Agarwalla (1997) 2 SCC 409 (AIR 1997 S C 925)

9. Be that as it may the question whether the judgment and decree is in terms of

the award or in excess of the award is a matter to be decided by the appellate Court. Similarly, whether the appeal has been admitted u/s 17 or 39 of the Act is a matter still to be decided by the Court. Whether the judgment and decree is in excess of the award is also to be decided by the appellate court.

10. We are, however, of the firm opinion that letters patent appeal against any order passed by a single Judge hearing the appeal u/s 39 of the

Arbitration Act is not maintainable in view of the legal position as discussed above because 2nd appeal is specifically barred. This view is also in

accord with the Full Bench decision of this Court in Kamla Devi v. Balbir Singh AIR 1981 JandK 70 wherein it has been laid down that :

It is thus manifest that under clause 12, a party can, as of a right, go in appeal against the Judge of the single Judge where the same has been

passed by him while hearing an appeal from a decree or order passed by a lower Court in its original jurisdiction, unless a second appeal against

such a decree or order is specifically barred under any other law (Union of India v. Mohindera Supply Co. AIR 1962 SC 256.

11. The next question is whether the impugned order determines any rights of the parties. Admission of the appeal does not determine any right

because rights of the parties are yet to be determined. The argument of Mr. Qayoom that appellate Court having rejected the objection to the

maintainability of the appeal on the ground that it is a consent decree, the rights have been finally determined and therefore, the appeal is competent

is also not tenable because we have already found that the appeal has been admitted under the Arbitration Act and not under the Code of Civil

Procedure. Therefore, the impugned order cannot be interfered on this score. So far as law laid down in New Kenilworth Hotel v. Orissa State

Finance Corporation AIR 1997 SC 973 (supra) and Hemlata Panda v. Sukuri Dibya (2000) 2 SCC 218 (supra) is concerned, the judgments

pertain to the exercise of jurisdiction as an appellate Court u/s 104(1) of CPC and as such are not relevant.

12. In view of the above, this appeal is held not maintainable. We have found that the appellate Court has stayed the operation of the decree

subject to furnishing surety by the appellants. So the appellant means any one of the appellants because the undertaking by any one of the

appellants will be undertaking on behalf of the State Government. The appeal is accordingly dismissed.