

(2020) 06 SIK CK 0008
In the Sikkim High Court
Case No : Sp. A. No. 01 Of 2019

Municipal Commissioner And Others

APPELLANT

Vs

Pabitra Singh Kami And Others

RESPONDENT

Date of Decision : 22-06-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100(A), 104(2)

Motor Vehicles Act, 1988 — Section 173

Sikkim High Court (Practice And Procedure) Rules, 2011 — Rule 148

Citation : (2020) 06 SIK CK 0008

Hon'ble Judges : Arup Kumar Goswami, CJ; Bhaskar Raj Pradhan, J

Bench : Division Bench

Advocate : Jorgay Namka, N. Rai, Sunil Kumar Baraily, Thupden G. Bhutia

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, CJ

1. Heard Mr. Jorgay Namka, learned Counsel, appearing for the appellants. Also heard Mr. N. Rai, learned Senior Counsel assisted by Mr. (The Municipal Commissioner, GMC & Anr. Vs. Mrs. Pabitra Singh Kami & Ors.) Sunil Kumar Baraily, learned Counsel, appearing for respondent nos. 1 & 2 as well as Mr. Thupden G. Bhutia, learned Counsel, appearing for respondent no.3.

2. This special appeal is directed against the judgment dated 01.07.2019 passed by the learned Single Judge in MAC App. No.11 of 2017, whereby the appeal preferred by the present appellants against the award dated 28.07.2017 passed by the learned Motor Accident Claims Tribunal, East Sikkim at Gangtok in MACT Case No.27 of 2016, was dismissed.

3. On the very first day when the appeal was listed on 21.08.2019, this Court fixed the case for hearing on the question of maintainability of the appeal and liberty was granted to the appellants to serve the respondents.

4. Accordingly, we have heard the learned Counsel for the parties on the

maintainability of this appeal.

5. Mr. Namka submits that Rule 148 of the Sikkim High Court (Practice and Procedure) Rules, 2011 (for short, PP Rules) makes it abundantly clear that this special appeal is maintainable before the Division Bench as judgment of the learned Single Judge was not passed in exercise of Appellate jurisdiction in respect of a decree or order made by a Court subject to the superintendence of the High Court. He submits that Rule 148 of the PP Rules does not bar an appeal before the Division Bench against the judgment of a learned Single Judge in respect of an award or an order passed by a Motor Accidents Claims Tribunal. He has contended that Courts and Tribunals are distinct entities and they are not one and the same thing. In this connection, he has placed reliance on the judgments of the Hon'ble Supreme Court in *The Bharat Bank Ltd., Delhi vs. The Employee of the Bharat Bank Ltd., Delhi*, and the *Bharat Bank Employees Union, Delhi*, reported in AIR 1950 SC 188 and *Associated Cement Companies Ltd. vs. P.N. Sharma and Anr.*, reported in AIR 1965 SC 1595. He (*The Municipal Commissioner, GMC & Anr. Vs. Mrs. Pabitra Singh Kami & Ors.*) contends that even the amendment of Section 100A of the Civil Procedure Code, 1908 (for short, CPC) by the Code of Civil Procedure (Amendment) Act, 2002 will not take away the Letters Patent jurisdiction of the High Court as the Tribunal under the Motor Vehicles Act, 1988 (for short, MV Act) is not a Civil Court as contemplated under CPC. In this regard, he has drawn the attention of this Court to a judgment of the Rajasthan High Court in the case of *Fazal Ali vs. Amna Khatun & Ors.*, reported in AIR 2004 Rajasthan 39. He submits that in the aforesaid case, a special appeal before the Division Bench against a judgment of a learned Single Judge in an appeal preferred under Section 173 of MV Act was held to be maintainable by holding that the amended provision under Section 100A CPC introduced by the Code of Civil Procedure (Amendment) Act, 2002 has no impact on the power of a Division Bench to entertain and adjudicate the matter. Mr. Namka has also relied upon a decision of the Hon'ble Supreme Court in the case of *P.S. Sathappan (Dead) by Lrs. vs. Andhra Bank Ltd. and Ors.* reported in (2004) 11 SCC 672.

6. Mr. Bhutia, learned Counsel appearing for respondent no. 3, endorses the submissions of Mr. Jorgay Namka.

7. Mr. N. Rai, learned Senior Counsel appearing for respondent nos. 1 and 2, submits that the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the case of *Geeta Devi and Ors. vs. Puran Ram Raigar and Anr.*, reported in (2010) 9 SCC 84, wherein the Hon'ble Supreme Court categorically held that intra-court appeal in the High Court was not maintainable against the order of the learned Single Judge deciding an appeal preferred against an award of Motor Accident Claims Tribunal in view of Section 100A CPC notwithstanding anything in the High Court Rules or the Letters Patent to the contrary. Accordingly, he submits that even if it is construed that a special appeal was envisaged under Section 148 of the PP Rules against the judgment of a

learned Single Judge passed in an appeal arising out of a challenge made to an award passed by the Motor Accident Claims Tribunal, the same will not, in any manner, assist the appellant in view of the pronouncement made by the Hon'ble Supreme Court in Geeta Devi (supra.). Accordingly, he prays for dismissal of the appeal as not maintainable.

8. At the outset, it will be appropriate to take note of Section 148 of the PP Rules, which reads as under:-

"148. Letters Patent Appeals:- (1) An appeal shall lie to the Division Bench from the Judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the superintendence of the High Court, and not being an order made in the exercise of revisional jurisdiction, and not being sentence or order passed or made in exercise of Criminal jurisdiction) of a Judge of the High Court sitting singly.

(2)The period of limitation for an appeal under this rule shall be thirty days from the date of the Judgment, decree or final order, as the case may be."

9. Section 100A CPC, after the amendment of Code of Civil Procedure (Amendment) Act, 2002, reads as follows:-

"100A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge."

10. Prior to the aforesaid amendment, Section 100A CPC, read as follows:-

"100A. No further appeal in certain cases.- Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal."

11. In P.S. Sathappan (Dead) by Lrs. (supra), an application was filed before the execution court for setting aside the court auction. The same being dismissed, an appeal was filed before the Madras High Court. On the dismissal of the same by the learned Single Judge, a letters patent appeal was filed. The same was dismissed by the Full Bench of the Madras High Court holding that in terms of Section 104(2) CPC, an appeal to a Division Bench against an order passed by the appellate court was not maintainable. When the matter reached the Hon'ble Supreme Court, because of the importance of the question, the same was referred to a Constitution Bench for consideration. The majority view was that the appeal was maintainable. It is to be noted at this juncture that while rendering the aforesaid decision, the Hon'ble Supreme Court had taken note of

Section 100A prior to its amendment in 2002. While coming to the aforesaid conclusion, the Hon'ble Supreme Court had observed that at the relevant time, neither Section 100A nor Section 104(2) CPC barred a letters patent appeal. In paragraph 30, it was observed as follows:-

"..... It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal."

12. A perusal of the judgment in Geeta Devi (supra) goes to show that a learned Single Judge of the High Court of Rajasthan had decided an appeal preferred against the award of the Motor Accidents Claims Tribunal. An appeal was preferred against the said judgment before the Division Bench and the Division Bench of the Rajasthan High Court had held that against the order of the learned Single Judge, the appeal does not lie in view of Section 100A CPC. While dismissing the appeal preferred against the judgment of the Division Bench, the Hon'ble Supreme Court held that intra-court appeal in the High Court was not maintainable in view of Section 100A CPC notwithstanding anything in the High Court Rules or the Letters Patent to the contrary.

13. The law laid down by the Hon'ble Supreme Court in Geeta Devi (supra) applies on all fours to the present proceedings and, therefore, it will not be necessary for this Court to embark upon an enquiry to find out as to whether Section 148 of the PP Rules contemplated a special appeal of the present nature. Even if it is assumed that Section 148 of the PP Rules did not restrict filing of an appeal against the judgment passed by the learned Single Judge in an appeal preferred against an award passed by the Motor Accidents Claims Tribunal, the same will not enure to the benefit of the appellants in view of the dicta in Geeta Devi (supra).

14. In view of the above discussions, we hold that this appeal is not maintainable and accordingly, the same is dismissed. Accordingly, I.A. No.1 of 2019 and I.A. No.2 of 2020 become infructuous.