
(2004) 03 GAU CK 0067
In the Gauhati High Court
Case No : CRP No. 1 of 2004

Nakuleswar Paul

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8(1), Order 1 Rule 8(2), 115, 115(1)

Citation : AIR 2005 Guw 54 : (2004) 3 GLR 461 : (2004) 3 GLT 700

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : D.K. Biswas and S. Lodh, for the Appellant; N. Majumder, A.K. Bhowmik and S. Deb, for the Respondent

Final Decision : Allowed

Judgement

T. Vaiphei, J.—This civil revision u/s 115 of the CPC is directed against the order dated 10.12.2003 passed by the id. Civil Judge, Junior Division, Court No. 1, Agartala in T.S. No. 93 of 2003. By the impugned order, the application filed by the plaintiff-petitioner for permission to file the suit in a representative capacity under Order 1. Rule 8 of the Code was rejected.

2. It is the case of the petitioner that Title Suit No. 93 of 2003 was filed by him challenging the placement of the officers in the grade of Senior Forest Rangers. He also filed a separate application under Order 1, Rule 8 of the Code for permission to sue in a representative capacity for and on behalf of others who have the same interest in the suit. By the impugned order, the Ld. Civil Judge rejected the application on the following grounds : - (1) no separate application was filed by the petitioner; (2) the officials who were sought to be represented by the petitioner did not have the same interest of the petitioner in the suit; (3) the body of persons sought to be represented is not sufficiently definite to be recognised as participants in the suit; (4) the number of officers are also not specified in the plaint.

3. Aggrieved by the impugned order, the petitioner is approaching this Court by way of a civil revision. At the outset, Mr. N. Majumder, the learned counsel appearing for the respondents has raised a preliminary objection contending that a civil revision does not lie against the impugned order. Following this objection the first point for determination in this petition is whether the order rejecting an application under Order 1, Rule 8 of the Code is a "case which has been decided" within the meaning of Section 115 of the Code. Since the point raised in this petition involves an important question of law, this Court requested Mr. A.K. Bhowmik, the learned senior counsel and Mr. S. Deb, the learned senior counsel to address the Court on this point.

4. In order to appreciate the rival contentions of the parties, we may first take note of the provisions of Section 115 of the Code, which are reproduced thus :

"115. Revision - (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit :

Provided that the High Court shall not, under this section, vary or reverse any order made, or Any order deciding an issue, in the course of a suit Or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the High Court."

5. The provisions extracted above plainly show that the first condition precedent for exercising the power of the High Court to call for the record is that a case should have been decided by any court subordinate to it. If no case is decided by a subordinate court, the High Court is denuded of the power to call for the record of the subordinate court. The proviso to Section 115(1) makes it clear that the High Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or a proceeding except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceeding. From this, it is evident that the Legislature in enacting this power of revision is evidently and predominantly concerned with finality of any proceeding and the avoidance of multiplicity of

judicial proceedings, which only result in prolonging litigations instead of facilitating expeditious disposal of proceedings and cases. Explanation appended to Section 115 defines the expression "any case which has been decided" as inclusive of any order made or any order deciding an issue in the course of the suit or other proceeding, which are the exact words used in the proviso referred to earlier.

6. In Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, the Apex Court has held that a plain reading of Section 115 as it stands makes it clear that the stress is on the question of whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is "yes", then the revision is maintainable. But on the contrary, if the answer is "no" then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the issues, the revision will not be maintainable. The Apex Court further held that the legislative intent is crystal clear and that those orders, which are interim in nature, cannot be the subject-matter of revision u/s 115. It is thus obvious that an interim order, which does not finally decide the issues between the parties is not amenable to revision.

7. In the case at hand, the petitioner appears to have been aggrieved by the impugned order rejecting his application for instituting the suit in a representative capacity. To understand the nature of the impugned order, we may refer to and reproduce hereunder the provisions of Order 1, Rule 8 of the Code:-

"8. One person may sue or defend on behalf of all in same interest (1) Where there are numerous persons having the same interest in one suit,

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such, on behalf of or for the benefit of, all persons so interested;

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The court shall, in every case where a permission or direction is given under Sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under Sub-rule (1), may apply to the court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under Sub-rule (1), and no such suit shall be withdrawn under Sub-rule (3) of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit

under rule 3 of that Order, unless the court has given, at the plaintiff's expenses notice to all persons so interested in the manner specified in Sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defend, as the case may be.

Explanation : For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

8. The general rule is that all persons having interest in a suit ought to be joined as parties to it, so that the matters involved may be finally adjudicated upon and fresh litigation over the same matters may be avoided. This rule is an exception to the above rule. The Apex Court in the case *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, observed that the provisions of this rule have been included in the Code in the public interest so as to avoid multiplicity of litigation. And the object for which this rule has been enacted is really to facilitate the decision of questions, in which a large number of persons are really interested, without recourse to the ordinary procedure.

9. It may be noted that this rule is an enabling provision which entitles one party to represent many who have a common cause of action; but it does not force any one to represent many if his action is maintainable without the joinder of the other persons. However, it also presupposes that each of the numerous persons by himself has a right to sue. If a person has himself no such right to sue. He cannot be permitted to sue on behalf of others who suffers from the same disability.

10. Coming now to the meat of the matter, the petitioner in Title Suit No. 93 of 2003 is challenging the seniority list of Senior Forest Rangers on the ground that his seniority has been adversely affected by the same. Along with the plaint, he also filed an application under Order 1, Rule 8 of the Code for permission to sue in a representative capacity, i.e., to represent other equally affected and equally placed officers of the Grade who may also be interested in challenging the seniority list. As mentioned earlier, the Id. Civil Judge by the impugned order rejected the application. As already noticed, the Apex Court has held that if the impugned order is interim in nature or does not finally decide the lis, a revision will not be maintainable. There can be no dispute that once the application for permission to sue in a representative capacity has been rejected, no other or further proceeding in the representative suit remain to be decided, and the matter finally stands terminated. Consequently, the impugned order rejecting

such an application cannot be interim in nature. On the other hand, by rejecting such an application, it can be safely concluded that the impugned order has finally decided the lis, namely, the suit filed by the petitioner in a representative capacity. He has been non-suited in a representative capacity. The suit finally stands disposed of. It is an entirely another matter if the petitioner is allowed or continue to maintain the suit in his, individual capacity, which is not a suit in a representative capacity. The suit filed in an individual capacity and the suit being filed in a representative capacity cannot be confused or treated as one and the same. Consequently, I hold that the impugned order rejecting the application filed by the petitioner for permission to sue in a representative capacity is an order made in the course of a suit within the meaning of "any case which has been decided" in Section 115 of the Code and, is therefore, amenable to a revision petition.

11. Having held that this revision petition is maintainable, the next question which arises for consideration is whether the impugned order suffers from any jurisdiction error calling for the interference of this Court in a revision petition. As noticed earlier, the application of the petitioner for permission to sue in a representative capacity has been rejected by the trial court on four grounds. The Id. Civil Court Judge grossly erred in holding that no separate application was filed by the petitioner for permission to sue in a representative capacity when such an application was indeed available on record. Moreover, there is no requirement of law that a separate application is necessary for obtaining such permission and the same may be gathered from the proceedings of the Court in which the suit is instituted. In the instant case, a prayer to that effect has been made in para 10 of the plaint.

12. However, the other grounds for rejecting of the permission to sue in a representative capacity requires serious examination. Order 1, Rule 8 of the Code will apply only if (i) the parties are numerous, (ii) they have the same interest, (iii) the necessary permission of the Court is obtained or direction under Clause (b) of Sub-rule (1) is given and (iv) notice under Sub-rule (2) is given. One of the conditions for invoking Order 1, Rule 8 is that the applicant must have the same interest with those persons sought to be represented by him but it is not necessary that the cause of action must be the same. Mulla in his class Commentary on CPC (15th edn.) has succinctly explained at page 987 : -

"In order that Order 1, Rule 8 may be invoked, it is not necessary that the cause of action must be the same. What it required is "Same interest" i.e.,

(i) common interest or

(ii) Common grievance."

13. The case of the petitioner as evident from para 10 of the plaint is that the impugned seniority list contains the names of eighteen Sr. Forest Rangers and out of these officials, there are other unreserved officials equally placed with him, whose interest are similarly affected thereby, The said officials were sought to be

represented by the petitioner in the aforesaid application. Though the application filed by the petitioner is admittedly sketchy (and so is the plaint) and wanting in material particulars and not happily drafted, by careful application of mind, there is no difficulty in coming to the conclusion that the unreserved officials are likely to be equally affected by the impugned seniority list and may have common grievance with the petitioner. Order 1, Rule 8 does not fix any limit to the number of persons to be represented. It is by now a settled law that whether the party considered to be "numerous" must depend not only on the nature of the controversy but also on the volume or the quantum of the subject-matter of the dispute; the word "numerous" is not synonymous with the word "numberless" or "innumerable"; each case much depend upon its own facts. It cannot also be held that the body of persons being represented by the plaintiff must be sufficiently definite for the Court to recognize as participants in the suit, for it has also been held that a representative suit is maintainable on behalf of a fluctuating body. It cannot be overlooked that the petitioner in the instant case is seeking to represent the unreserved group of Sr. Forest Rangers similarly placed with the petitioner, whose interests are allegedly being adversely affected by the impugned seniority list. Therefore, on the facts and circumstances of this case, there is no question of indefiniteness in the persons being represented or of any material defect in not specifying the numbers of officers being represented by the petitioner. In the view that I have taken, in my judgment, the Id. Civil Judge has failed to exercise his jurisdiction or acted with material irregularity and in breach of the provisions of Order 1, Rule 8 of the Code in non-suiting the petitioner in a representative capacity by the impugned order.

14. For the reasons and conclusions stated in the foregoing paragraphs, the impugned order dated 10.12.2.003 cannot be sustained in law and is hereby quashed. The Id. Civil Judge is directed to allow the petitioner to institute the suit in a representative capacity and thereafter proceed with the suit in accordance with law. However, in the facts and circumstances of the case, there shall be no order as to costs.

Revision petition stands allowed.