

(1995) 04 GUJ CK 0012
In the Gujarat High Court
Case No : A.F.O. No. 538 of 1993

National Insurance Co. Ltd.

APPELLANT

Vs

Patel Mohanlal Meghjibhai Desai and Another

RESPONDENT

Date of Decision : 01-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 9

Citation : (1996) ACJ 647 : (1996) 1 GLR 16

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Advocate : V.P. Shah, for the Appellant; Y.S. Lakhani, for the Respondent

Final Decision : Allowed

Judgement

M.S. Parikh, J.—The petitioner-appellant herein is the original plaintiff and the respondents are the original defendants in Special Civil Suit No. 247 of 1985 pending before the learned Civil Judge (S.D.), Junagadh, in which the appellant-plaintiff has prayed for a decree of Rs. 69,730/- with interest and costs against the present respondents-defendants. The parties are, in this judgment, referred to herein as the plaintiff and defendants.

2. The basis of the plaintiff's suit apparently is that award which has been passed in M.A.C. No. 348 of 1982 filed before the Motor Accidents Claims Tribunal at Junagadh on 28.12.1983 has been obtained by practising fraud on the Tribunal inasmuch as on the detailed facts set out in the plaint, the first defendant obtained false certificate for injuries and disablement from the second defendant and misled the Tribunal. In the suit before the learned Judge issues were framed and the defendant No. 1 moved an application, Exh. 83, to hear the issue regarding jurisdiction as preliminary issue. The trial Judge heard the said issue as preliminary issue and came to the conclusion that the trial court did not have jurisdiction to hear the suit. Accordingly, he allowed application, Exh. 83, and obviously put an end to the suit as per the impugned order dated 3.5.1993. It is this order which is the subject-matter of challenge in this appeal.

3. I have heard Miss V.P. Shah, learned advocate for the appellant and Mr. Y.S. Lakhani, learned advocate for respondents.

4. The provisions ousting the jurisdiction of civil court as contained in Motor Vehicles Act have not only been quoted by the learned trial Judge in his detailed judgment, but have been read before me. Special jurisdiction has been conferred upon the Tribunal by virtue of Section 110 of the Motor Vehicles Act for the purpose of adjudicating upon the claim for compensation in respect of accident involving the death of, or bodily injury to, persons arising out of the user of motor vehicles, or damage to any property of a third party as arising or both, subject to proviso with regard to claim of compensation in respect of damage to the property with which we are not concerned presently. It can be seen from the averments contained in the suit the plaintiff does not seek restitution of the awarded amount. In fact, the plaintiff does not seek restitution of the awarded amount on any error committed by the Tribunal. Plaintiff's case is that in obtaining the award from the Tribunal the defendant misrepresented the facts which ultimately resulted in passing of the award. There is no provision in the Motor Vehicles Act which provides for the Tribunal to set aside the award on the ground of fraud. The ouster of civil court's jurisdiction as contained in Section 110-F of the Motor Vehicles Act is with regard to any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal.

5. That being the position of law flowing from the provisions of Motor Vehicles Act, it cannot be said that the jurisdiction of civil court in a case like the present stands ousted either expressly or by necessary implication. The provision ousting the jurisdiction of civil court has to be construed strictly and that is the settled law. The normal rule of law is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded. Section 9 of the CPC specifically speaks of jurisdiction of civil courts in all matters of civil nature. The suit to set aside a decree or an award passed consequent upon fraud or misrepresentation would necessarily be a suit of civil nature. In that view of the matter the decisions which have been cited on behalf of the respondent and referred to by the Tribunal would obviously have no application to the case like the present.

5-A. In this view of the matter, it is the submission of Mr. Lakhani that on the facts set out by the plaintiff the trial court would have jurisdiction but not otherwise. It is obvious that if the plaintiff fails to establish the facts set out or if on any other legal ground the plaintiff is not able to bring home the claim in the suit, the plaintiff would be non-suited. That, however, would not lead to a conclusion that the civil court does not have jurisdiction to hear and entertain the suit.

6. In above view of the matter, this appeal is allowed. The impugned order dated 3.5.1993 rendered by the learned 2nd Jt. Civil Judge (S.D.), Junagadh, is hereby quashed and set aside and it is held that the learned Judge has jurisdiction to hear the suit. It is hereby directed that the suit in question shall be expeditiously

heard and decided. It shall be disposed of as expeditiously as possible, preferably within a period of six months from the date of receipt of this order.

The appeal is allowed in the aforesaid terms with no order as to costs.