

(2024) 11 KL CK 0008

In the High Court Of Kerala

Case No : Civil Revision Petition No. 511 of 2018

Our Investments Enterprises Ltd

APPELLANT

Vs

Saic Zachariah

RESPONDENT

Date of Decision : 01-11-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 115

Limitation Act, 1963 — Section 14

Securities and Exchange Board of India Act, 1992 — Section 15T, 15T(1)(a), 15Y, 20(a), 20A, 21, 22(e)

Citation : (2024) 11 KL CK 0008

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : T Krishnanunni, George Zachariah Eruthickel, V.Krishna Menon, E.K.Madhavan, P.Vijayamma

Final Decision : Allowed

Judgement

A. Badharudeen, J

1. This Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure and the order passed by the Additional Munsiff, Ernakulam in O.S.No.1095/2015 regarding issue of jurisdiction is under challenge in this revision petition. The revision petitioner herein is the sole defendant and the respondent is the sole plaintiff in the above suit.

2. Heard the learned Senior counsel for the revision petitioner and the learned counsel for the respondent in detail.

3. On reading the averments in the plaint, with reference to the claims raised, the learned senior counsel appearing for the revision petitioner/defendant argued that civil court has no jurisdiction to entertain the matter, mainly on asserting that as per Annexure.A2 Exit order, passed by the Securities and Exchange Board of India (hereinafter referred to as 'SEBI' for short), it was decided to value the

liabilities and as per Annexure.A3, in column No.230, the amount due to the respondent has been determined as Rs.2,60,422.00, which is covered by the first part of the claim raised in paragraph No.2 of the plaint. It is argued that as regards the 2nd part, claiming amount towards Building Fund and Settlement Stabilization Fund to the tune of Rs.2,02,660.00 as per Annexures.A2 and A3, the same was deemed to be rejected and therefore, the remedy of the respondent is to approach the Securities Appellate Tribunal and it has been provided under Section 15 T(1)(a) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act' for short), that by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder is appealable before the Securities Appellate Tribunal having jurisdiction in the matter. It is also pointed out that under Section 15Y of the SEBI Act, civil courts have no jurisdiction in respect of the matters dealt under the Section. It has been provided that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under the SEBI Act or a Securities Appellate Tribunal constituted under the Act is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. Thus, the learned senior counsel would submit that the remedy of the respondent/plaintiff is to approach before the appellate tribunal and the civil court lacks jurisdiction to entertain the suit.

4. In response to this contention, the learned counsel appearing for the respondent/plaintiff submitted that this contention is no more available because in a similar suit, viz. O.S.No.654/2006 filed before the Sub Court, Ernakulam earlier, this contention was raised by the revision petitioner herein, who got arrayed as the defendant therein. In O.S.No.654/2006, the court raised issue No. (1) to address the question of jurisdiction and negated the same. It is also submitted that when the said verdict was appealed before this Court, as per judgment in R.F.A 499/2009 dated 12.04.2019, this Court also upheld the finding of the trial court and therefore, the present suit, seeking similar relief, is perfectly maintainable before the civil court and no bar would apply in so far as the reliefs sought for are concerned.

5. At this juncture, the learned senior counsel appearing for the revision petitioner argued that the court cannot confer jurisdiction to a forum/court which actually lacks jurisdiction by a judicial order. He also would submit that, if the court entertains a matter which has no jurisdiction, the same is not a precedent to hold that in similar matters also, without jurisdiction, the civil court can entertain the dispute.

6. In this matter, the dispute has to be addressed with reference to various provisions of the SEBI Act. The provisions are 15T, 15Y, 20, 20A and 21 of the SEBI Act. The same are extracted as under:

"15T. Appeal to the Securities Appellate Tribunal.

(1) Save as provided in sub-section (2), any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

[(2) *****

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority], as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section

(1) , the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be] the] parties to the appeal and to the concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

15Y. Civil Court not to have jurisdiction.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

20. Appeals

(1) Any person aggrieved by an order of the Board made [before the commencement of the Securities Laws (Second Amendment) Act, 1999,] under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

PROVIDED that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the central government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

PROVIDED that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

20A. Bar of jurisdiction.

No order passed by the Board or the Adjudicating Officer under this Act shall be appealable except as provided in section 15T or section 20 and no civil court shall have jurisdiction in respect of any matter which the Board or the Adjudicating Officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the Adjudicating Officer by, or under, this Act."

21. Savings

Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

7. It is specifically pointed out by the learned Senior counsel for the revision petitioner that, since the Board taken a decision as per Annexures.A2 and A3, in view of Section 15Y of the SEBI Act, no civil courts shall have jurisdiction to entertain any suit in respect of a matter, which was empowered to be exercised by the Securities Appellate Tribunal constituted as per Section 15T(1)(a) of the SEBI Act. The learned Senior counsel for the revision petitioner read out relevant paragraphs of the plaint to contend that the entire suit is based on Annexures.A2 and A3 and the same is not based on a separate cause of action for realization of money under the head 'Building fund' and 'Settlement Stabilization fund'.

8. Dispelling this contention, it is argued by the learned counsel for the respondent that, in the decision reported in Mrs.Asha Anilkumar Kataria v. Ashokkumar s/o Kevalchand Bafna and others [2007 0 Supreme (Bom) 738 :

2007 4 AIIMR 355 : 2007 5 BomCR 125 : 2007 2 MahLR 817], the Division Bench of the Bombay High Court, considered the question of jurisdiction dealt under Sections 20(a), 22(e) and 15(y) read with Section 21 of the SEBI Act, wherein the Court held that the plaintiff as a sub broker is bound to be not a member of stock exchange and the defendants, as clients, are not members of a recognized stock exchange and the dispute before the court is, therefore, a dispute between two persons, who are not members of a registered stock exchange. Therefore, the civil court has jurisdiction.

9. The learned Senior counsel for the revision petitioner read out the decision and contended that, in the said suit, the facts are totally different and therefore the ratio has no application in the present case. The learned Senior counsel further submitted that, as per the facts dealt in Mrs.Asha Anilkumar Kataria's case (supra), defendant Nos. 1 and 2 therein are real brothers and sons of defendant No.3, one Abhaykumar of Madras (Chennai) is common relative of plaintiff and defendants. Defendants were introduced to plaintiff by the said Abhaykumar and the defendants claimed to be wizards in stock trading. The plaintiff therein was impressed by the tall claim then made by defendant Nos. 1 and 2 and accepted them as clients of KAT STOCKS. Defendants started trading in stock business through plaintiff concern. Later when dispute arose, the same was adjudicated by the civil court. Since the present case is in between member of a stock exchange and the stock exchange, the only way available to the respondent herein is to file an appeal before the Appellate Tribunal as provided under Section 15T of the SEBI Act and the present suit is not maintainable before the civil court.

10. The learned counsel for the respondent would submit that as per paragraph No.19 of the plaint averments, it has been contended that, "the plaintiff had paid amounts towards security deposit, additional security deposits, building fund, settlement stabilization fund etc. It is submitted that the amounts furnished towards these deposits have been treated as refundable. It is further submitted that the defendant has also accepted that the amounts furnished by the members under different heads are refundable. Further resolution has been passed in the meeting of the defendant to the effect that the amounts furnished under different heads are refundable. Plaintiff had paid a total amount of Rs.4,81,522/- towards these deposits/payments. However the defendant has paid only Rs.2,71,362/- against the total amount of Rs. 4,81,522/- due to the plaintiff leaving a balance of Rs.2,10,160/-. Even the amount of Rs. 2,71,362/- paid was less than the actual amount legally due to the plaintiff. The defendant has arbitrarily and unjustly deducted the above amount from the amounts legally due to the plaintiff. The defendant has no manner of right to withhold the amount of Rs. 2,10,160/-. It is submitted that no amount is outstanding from the plaintiff to the defendant. The failure of the defendant to pay the full amount due to the the plaintiff amounts to withholding of the amount legally and legitimately due to the expenses of the plaintiff which in turn amounts to unjust enrichment of the defendant at the expense of the plaintiff. The defendant is bound as per

the Exit Order dated 23.12.2014 to refund the amount actually due to the plaintiff. The plaintiff in terms of defendant's letters No.SE/L/066/2013 dated 8.2.2013 and No.SE/L/563/2014 dated 29.9.2014 had informed the actual amount due by way of refund from the defendant to the plaintiff. The defendant had not paid the full amount due to the plaintiff. The plaintiff by letter dated 10.4.2012 had demanded the defendant to pay interest on the outstanding amount. The plaintiff reiterated the demand for interest in his letters dated 7.12.2013, 14.7.2014 and 15.10.2014. It is submitted that the Report submitted by the Valuation Agency also state about liability of the defendant to pay interest on the deposits and other payments received from the members. The defendant inspite of the repeated demand made by the plaintiff for payment of the amount legally and legitimately due to the plaintiff from the defendant with interest has failed and neglected to pay the same to the plaintiff. The defendant on 6.3.2015 paid on an amount of Rs.2,71,362/- against the total amount of Rs.7,04,266/- inclusive of interests leaving a balance of Rs.4,32,904/-. The plaintiff is entitled to recover the amount of Rs. 4,32,904/- from the defendant and its assets. The defendant is liable to pay interest at 15% on Rs. 2,10,160/-from 6.3.2015 till date of suit. The plaintiff is thus entitled to realise the amount of Rs.4,32,904 + Rs.15,880/- being interest accrued from 6.4.2015 till date totalling to Rs.4,48,784/- from the defendant and its assets”.

11. Adverting to the said contention, it is urged by the learned counsel appearing for the respondent/plaintiff that, the question of jurisdiction itself is a question of law and facts and this revision petition may be disposed of relegating the trial court to decide the question of jurisdiction based on the evidence to be adduced.

12. In this matter, it is not in dispute that the respondent was a member of the revision petitioner and he had remitted Security Deposit, Additional Security Deposit Nos.I, II and III to the tune of Rs.2,78,862/- and also Building Fund + Settlement Stabilization Fund to the tune of Rs.2,02,660/- and he stopped trading activity with the revision petitioner on 25.05.1999. The respondent later submitted his resignation on 30.11.2004 with request to forward the same to SEBI. Since the said demand was not heeded, he was forced to file W.P.(C) No.21154/2008 (R) before this Court seeking a direction to the SEBI to do the said exercise. Accordingly, it was forwarded and his resignation was accepted on 17.01.2012. Now, as extracted above in paragraph No.19, the respondent claims the amount therein.

12. In this matter, the question falls for consideration is whether the present suit is barred under Section 15Y of the SEBI Act, in view of empowerment adjudication of the said dispute to the Appellate Tribunal in terms of Section 15T(1)(a) of the SEBI Act?

13. Before addressing this question, it is necessary to refer decision of the Apex Court reported in Mathura Prasad Bajoo Jaiswal and Others v. Dossibai N. B. Jeejeebhoy [1971 AIR 2355 : 1970 SCR (3) 830 : AIR 1971 SC 2355 : 1970 RENCJ 1091], placed by the learned Senior counsel for the revision petitioner

regarding the question of jurisdiction holding the view that the judgment did not operate as res judicata. The relevant observations in the decision are as under:

A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the court holds that it has no jurisdiction, the decision will not, operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the decision will not operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise. In determining the application of the rule of res judicata the court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue in s. 11, Code of Civil Procedure means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order because of the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

if the decision in the previous proceeding be regarded as conclusive it will assume the status of a special rule of law applicable to the parties relating to the jurisdiction of the Court, in derogation of the rule declared by the Legislature.

14. This decision has been highlighted when the learned counsel for the respondent placed judgment of the Sub Court in O.S. No.654/2006 dated 07.10.2008, where similar relief claimed by another person against the revision petitioner was considered by the trial court, finding that, civil court had jurisdiction to entertain the case. The learned counsel for the respondent also placed the judgment in R.F.A. No.492/2009 dated 12.04.2019 arose out of the judgment in O.S. No.654/2006, to contend that the appeal was dismissed confirming the grant of relief by the trial court finding that civil court had jurisdiction to entertain the case.

15. In fact, the law is settled that, the rule of res judicata, for a rule of procedure cannot supersede the law of the land. In so far as the legal question argued by the learned senior counsel for the revision petitioner is concerned, relying on the decision in Mathura Prasad Bajoo Jaiswal's case (supra) the same is not in dispute. Therefore, the judgment in O.S. No.654/2006 and the judgment in R.F.A. No.499/2009, in no way would operate as res judicata in the matter in

dispute.

16. Reverting to the question of jurisdiction, Section 15T of the SEBI Act provides that, any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under the SEBI Act, or the rules or regulations made thereunder may prefer an appeal before the Securities Appellate Tribunal having jurisdiction in the matter.

17. Section 20A of the SEBI Act also deals with bar of jurisdiction and it has been provided that, no order passed by the Board [or the Adjudicating Officer] under the Act shall be appealable except as provided in [section 15T or] section 20 and no civil court shall have jurisdiction in respect of any matter which the Board [or the Adjudicating Officer] is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board [or the Adjudicating Officer] by, or under, the SEBI Act.

18. It is relevant to note that Section 21 of the SEBI Act is the saving clause, wherein it has been provided that, nothing in the SEBI Act shall exempt any person from any suit or other proceedings which might, apart from the SEBI Act, be brought against him.

19. So the law emerges is that, in respect of matters specifically dealt under Section 15T of the SEBI Act, the bar under Section 15Y of the SEBI Act would apply and also in respect of an order passed by the court dealt under Section 20A of the SEBI Act also the bar would apply and in such cases, civil court has no jurisdiction to entertain a suit or proceedings covering the said matters. At the same time, Section 21 of the SEBI Act, provides filing of suit and other proceedings which might, apart from the Act, be brought against any person which are outside the purview of Sections 15T, 15Y and 20A of the SEBI Act. Thus, the jurisdiction of civil court is not totally ousted and the bar would apply to suit or proceedings specifically dealt in Section 15T, 15Y and 20A of the SEBI Act.

20. Here, I have already pointed out, the respondent claims money due under two heads as pleaded in paragraph No.3 of the plaint. Paragraph No.3 of the plaint is as under:

It is submitted that at the time of admission as member of the defendant, the plaintiff had furnished an amount of Rs.10,000/- as security deposit. The plaintiff subsequently furnished amount towards additional security deposit I, II and III on subsequent dates in accordance with the directions taken by the council of Management of the defendant based on the guidelines/instructions issued by SEBI from time to time. The plaintiff had paid a total amount of Rs.2,78,862/- towards security deposit additional security deposit I, II and III the details of which are furnished below:

Security Deposit - Rs. 10,000-00

Addl. Security Deposit No.I- Rs.1,00,000-00

Addl.Security Deposit No.II- Rs. 90,000-00

Addl.Security Deposit No.III- Rs. 78,862-00

Total - Rs.2,78,862-00

In addition to the above the plaintiff had furnished amount towards the following:

Building fund - Rs.1,47,372-00

Settlement Stabilization fund -Rs.55,288-00

Total -Rs.2,02,660-00

The plaintiff had thus paid a total amount of Rs.2,78,862 + Rs.2,02,660 = Rs.4,81,522-00.

21. As per Annexure.A3 (page No.71), the respondent was given Rs.2,68,422/- and according to the respondent, the same is not the amount entitled. Apart from that, the respondent is entitled to get building fund and settlement stabilization fund, which would come to Rs.2,02,660/-, in view of the pre-existing right, agreed to be returned at the time of deposit.

22. As far as the decision in Mrs.Asha Anilkumar Kataria's case (supra) is concerned, the same is in between members of stock exchange and brokers and not a suit in between member of a stock exchange and stock exchange. Therefore, the ratio could not be applied, in the facts of this case.

23. On reading the averments in paragraph No.19 of the plaint with that of the claims raised, it could be gathered that the respondent seeks realization of the amount partly allowed by Annexures.A2 and A3 and the amount not considered by Annexures.A2 and A3. But, it is emphatically clear that as per Annexures.A2 and A3, SEBI addressed the amount entitled by various members of the stock exchange and the amount due to the respondent was allowed as item No.230 of Annexure.A3. To put it differently, the claim of the respondent now raised under the first part, allowed in part without grant of interest and the claim under the second part was neither considered nor allowed. It is not in dispute that Annexure.A2 is the order passed by the Board and Annexure.A3 is the valuation made thereof. Even though, it is submitted by the learned counsel appearing for the respondent that the respondent is not disputing Annexures.A2 and A3, this submission could not be justified, because of the simple reason that the respondent claims amount which was partly allowed by the Board and the amount not considered by Annexures.A2 and A3. Thus, no doubt, the present suit has been filed dissatisfied by Annexures.A2 and A3 and in fact, challenge against the same is the subject matter of the suit. Since, it is provided under Section 15T of the SEBI Act that, any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made

thereunder may prefer an appeal before the Securities Appellate Tribunal having jurisdiction in the matter and Section 15Y of the SEBI Act bars the jurisdiction of the Civil Court to entertain any suit in respect of a matter, which was empowered to be exercised by the Securities Appellate Tribunal constituted under the Act, the remedy of the respondent to address his grievance is to file appeal before the Securities Appellate Tribunal and not before the Civil Court. Therefore, the finding of the trial court that the trial court has jurisdiction to entertain the suit is found to be unsustainable and the impugned order is liable to be set aside.

24. Insofar as the question whether the issue of jurisdiction is a mixed question of law and facts, it is held that the same is not a mixed question, but a pure question of law to be decided, before proceeding with trial.

25. In the result, this civil revision petition stands allowed, setting aside the order impugned, holding that the suit is not maintainable before the Additional Munsiff Court, Ernakulam.

It is specifically ordered that the respondent/plaintiff is at liberty to file appeal before the Securities Appellate Tribunal to address his grievance, as per law and while computing the period of limitation for filing the appeal, the period covered by this litigation shall be excluded, in terms of Section 14 of the Limitation Act.