

(1973) 11 AP CK 0009
In the Andhra Pradesh High Court

Parimi Venkanna

APPELLANT

Vs

Managing Partner, Modern Spun Pipe Co.

RESPONDENT

Date of Decision : 09-11-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105, 115, 17, 2, 51

Constitution of India, 1950 — Article 227

Payment of Wages Act, 1936 — Section 15, 17, 20

Citation : (1974) 2 LLJ 347

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Judgement

Sambasiva Rao, J.—The question that I am called upon to answer in this civil revision petition is whether cross-objections lie at the instance of the respondent in an appeal preferred u/s 17 of the Payment of Wages Act, 1936.

2. The material facts are brief: The revision petitioner is an employee in the service of the respondent. He filed a claim before the authority under the Payment of Wages Act, Visakhapatnam, for Rs. 2,875 as delayed wages and for Rs. 700 as compensation. When the case was taken up for hearing the claimant was present. But the employer was absent. He was set ex parte and a direction was given to him to pay the sum of Rs. 2,875 claimed as delayed wages within 15 days from the date of the receipt of the direction. The authority, however, did not grant the claim for compensation. The employer preferred an appeal to the District Judge, West Godavari at Eluru who was constituted as the appellate authority under the Act against the direction. The claimant, however, kept quiet without preferring an appeal, but filed cross-objections within 30 days from receiving the notice of the appeal in respect of his claim for compensation which he had not been granted by the authority. The office took an objection to the maintainability of the cross-objections and the District Judge (appellate authority) upheld this objection, saying that the only remedy available for the claimant was to prefer a substantive appeal and the provisions of Order 41, Rule 22, Civil Procedure Code, were not available to him. The claimant has filed this

revision petition challenging that view.

3. Sri V. Narasimha Rao for the petitioner contends that the appellant authority is a Court within the meaning of the CPC and consequently all the provisions of that Code including Order 41, Rule 22, CPC can be taken recourse to before it. The District Court which is constituted as the appellate authority is not a creature of the Payment of Wages Act and had been existing even before that Act came into force. He relies on the language of Rule 22 and points out that there are no limitation placed therein on the right of a respondent to file cross-objections in any appeal pending before a Court. He, therefore, maintains that the cross-objections filed by his client before appellate authority are maintainable.

4. On the other hand. Sri C. V. N. Sastry submits that the right to file an appeal, or cross-objections is a creature of law. Unless a statute specifically provides for an appeal or cross-objections they cannot be taken resort to by an aggrieved person. The Civil Procedure Code, prescribes the procedure and remedies in ordinary civil Courts arising under the general law. Payment The of Wages Act is a special enactment providing for separate remedies for persons feeling aggrieved as per its provisions. It has constituted authorities which are authorised to dispose of claims and counter claims that arise under the Act. In this particular case the Regional Assistant Commissioner of Labour, Visakhapatnam, is such a primary authority. The Act has further specifically conferred appellate power on the District Court. The District Court, while functioning as the appellate authority, has to conduct matters in accordance with the provisions of the Act and not according to the general law and the Civil Procedure Code, excepting to the extent that they are applicable to the procedure that has to be adopted for disposing of matters under the Act. Section 17 provides for appeals and any aggrieved party is thus enabled to file an appeal against orders or directions of the primary authority. The petitioner could have himself filed another appeal if he felt aggrieved by the order of the authority. The Act specifically states that the directions of the primary authority are final subject to the result of the appeal u/s 17. It does not provide for filing any cross-objections. So, the cross-objections preferred by the petitioner are not maintainable.

5. It is true that the District Court, when it disposes of appeals u/s 17 of the Act functions as a Court and not as persona designata. Section 17 constitutes the Court of Small Causes in a presidency town and elsewhere the District Court as the appellate authority under the Act. It will be pertinent to notice that the Court as such is made the appellate authority and not the Judicial Officer who presides over the Court. This position is well established. Though quite a large number of decisions are cited in support of this proposition it would suffice to refer to two or three decisions.

6. In The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad , the Supreme Court laid down that a District Magistrate, who is also to be an authority u/s 3 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, is not a persona

designate. By virtue of Section 2(d) of that Act, the special authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To that extent the officers, on authorisation would be equal to the District Magistrate. A persona designata is a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of class, or as riling a particular character.

7. A Full Bench of the Madras High Court held in Parthasarathi Naidu v. Koteswara Rao AIR 1924 Mad. 571 that where by statute matters are referred to the determination of a Court of Record with no further provision, the necessary implication is that the Court will determine the matters as a Court. Its jurisdiction is enlarged but all the incidents of such jurisdiction including the right of appeal from its decision remain the same. Relying on this observation, it is contended that by virtue of the provisions of Section 17 of the Act, the jurisdiction of the Small Causes Court or the District Court is only enlarged or extended by bringing within its purview appeals preferred under the Act. The said Courts' power to function as regular Courts under the provisions of the Civil Procedure Code, is not in any way restricted or limited. Since the powers of the Court under the CPC include the jurisdiction to entertain cross-objections, the Court dealing with an appeal u/s 17 can also entertain cross-objections. The Full Bench was dealing with the question whether a revision petition u/s 115, Civil Procedure Code, would lie. Schwabe, C. J., speaking for the Full Bench noticed Section 57 of the Madras Local Boards Act, which made the decision of the Judge final and that there was no better way of directing that there shall be no appeal than by the Legislature stating that the decision of a particular Court shall be final. So, there was no appeal against the decision of the Judge and consequently a revision petition u/s 115, Civil Procedure Code, was maintainable. This is on the principle that a Court ordinarily subject to the revisional powers of the High Court should not be permitted to act wholly without jurisdiction without the aggrieved party being entitled to any remedy. But, the Full Bench was not dealing with the maintainability of an appeal or cross-objections. So, it would not help the contention of the petitioner.

8. My attention is also invited to a decision of the Madhya Bharat High Court in Rajkumar Mills v. Inspector, P.W.M.B. AIR 1955 M.B. 60, where the question of maintainability of a revision petition u/s 115, Civil Procedure Code, or under Article 227 of the Constitution against an order passed under the Payment of Wages Act was considered. The Court held that the District Court dealing with an appeal u/s 17 functions as an ordinary Court. So, a revision petition is competent against the decision of the Court. When there is no appeal provided, a revision petition against an order of that Court subordinate to the High Court may be maintainable either u/s 115, Civil Procedure Code, or under Article 227 of the Constitution. That was the point which the Madhya Bharat High Court was considering. But, I must with respect, express my dissent from the general observations made by the Division Bench that the "orders and decrees of the District Court will be governed by the Rules of the Civil Procedure Code". There

cannot be any decree passed by a primary authority under the Act or by a District Court u/s 17, since their decisions cannot be decrees, within the meaning of Section 2(2), Civil Procedure Code. In regard to orders and directions specified in Section 17(1), a specific remedy of appeal is provided therein itself and the right of general appeal provided u/s 96, Civil Procedure Code, cannot be invoked.

9. It is well to remember that no litigant has an automatic right to appeal to a Court. An appeal is only a creature of the statute. All appeals exist merely by statute and unless the statutory conditions are fulfilled, no jurisdiction is given to any Court of Justice to entertain them. (Vide AIR 1935 5 (Privy Council)) Appeals are preferred to appellate Courts from the decrees and orders of the Courts of law. because they are provided for under the Civil Procedure Code. Section 96 of the Code, lays down that an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court. Likewise, by virtue of the provisions of Section 105(1) read with Order 43(1), Civil Procedure Code, appeals are provided for against orders made by a Court in the exercise of its original or appellate jurisdiction. It is only under these provisions appeals are preferred to higher Courts against orders and decrees passed by Courts of law. Rule 22 of Order 41, Civil Procedure Code, enable a respondent, though he may not have appealed from any part of the decree, to take any cross-objections to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow. It is immediately seen that just like appeals against decrees are permitted by Section 96, cross-objections are permitted to be filed by respondents in such appeals under Rule 22 of Order 41, Civil Procedure Code. If this provision does not exist in the Code, it is not possible for any respondent to file cross-objections. At the same time it should be noted that under Rule 22 only a respondent in an appeal against a decree can prefer cross-objections. So, the facility of filing cross-objections are limited only to appeals preferred against decrees. I must, therefore, reject the contention of the learned Counsel for the petitioner that Rule 22, confers unlimited power of filing cross-objections in any appeal of any nature.

10. The question then is whether the order or direction of the primary authority under the Payment of Wages Act, is a decree. Decree is defined by Section 2(2), Civil Procedure Code, as meaning the formal expression of an adjudication, which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. All adjudications are, therefore, not decrees. They should be by Courts and should be rendered in any of the matters in controversy in suits. By any stretch of imagination it cannot be said that the primary authority under the Payment of Wages Act, is a Court or that the disputes before it is a suit. Consequently, the adjudication made by it is not a decree. An appeal against it cannot be filed u/s 96, Civil Procedure Code, to an

Appellate Court. Consequently, Rule 22 of Order 41, Civil Procedure Code, which provides for appeals from original decrees does not apply to appeals against orders or directions given by primary authority under the Payment of Wages Act. That is why the said Act clearly provides for appeals u/s 17 against such decisions. If Section 17 is not in the Act, it follows that no appeal could be filed against the orders of the primary authority.

11. Section 17 of the Act is practically a self-contained Code, in regard to appeals against orders or directions of primary authority. It lays down against what orders or directions appeals lie, to what authorities such appeals can be preferred, by whom they can be filed, the manner in which the appeals should be filed, the limitation therefore and also the powers of the appellate authority. The appeals which come within the ambit of Section 17 can be filed and they can be presented and conducted only in accordance with the provisions thereof. The power of the appellate authority, it is manifest, cannot be invoked in any other manner. Sub-section (2) should also be taken notice of in this connection. It clearly makes an order or direction of the primary authority final, save as provided in Sub-section (1). That means, if no appeal is filed invoking the right granted under Sub-section (1), the order or direction of the primary authority is final. It may even be said that by virtue of this provision, cross -objections are precluded by necessary implication. It may be noted here that the revision petitioner, whose claim had been allowed only in part, could have himself preferred an appeal to the District Court against the direction disallowing his claim in part. That is made clear by Sub-section (I) of Section 17 which says that an appeal lies against an order dismissing either wholly or in part an application made under certain provisions of the Act. The revision petitioner, who has not availed himself of the facility given to him under Sub-section (1) cannot turn round and file cross-objection, when there is no provision for it and by necessary implication is also precluded. It is here necessary to note that there is no provision in the Act attracting to its proceedings all the provisions of the CPC including the right to file cross-objections.

12. Though there is no precedent, which has considered this particular question u/s 17 of the Payment of Wages Act, I may usefully refer to a few decisions which deal with analogous provisions or situations.

13. Chagla, C. J., considered the scope of Sections 17 and 15 of the Payment of Wages Act in Prem Narayan Amritlal Varma Vs. Divisional Traffic Manager Bhusawal, . The learned Judge held that u/s 17 the appellate Court's power is confined to hearing an appeal from a direction made by the authority under Sub-section (3) or Sub-section (4) of Section 15. Where an authority condoned the delay in filing an application u/s 15(2) it is not a direction under Sub-section (3) and so no appeal lies from such an order.

14. A Division Bench of the Madras High Court was dealing in Vedanthachariswami v. Muthiah Chetti (1955) 1 M.L.J. 229. with a memorandum of cross-objections filed in an appeal against an order of the Estates Abolition

Authority. Satyanarayana Rao, J., delivering the Judgment said that there is no right conferred on an aggrieved person under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, to file a memorandum of cross-objections in an appeal. There is no provision in the Act attracting all the provisions of the Civil Procedure Code, including the right to file cross-objections. The right of an aggrieved person is restricted to appeal u/s 51 of the Act.

15. In *Eltiru Electric Supply Corporation Ltd, v. T. Satyam* (1967) 2 AW.R. 344. M. Krishna Rao, J., was considering the maintainability of memorandum of cross - objections in an appeal against an order of the Special Officer under the Industrial Disputes Act, 1947 and the Andhra Electricity Supply Undertakings Acquisitions Act, 1954. The learned Judge held that the memorandum of cross-objections is not maintainable inasmuch as the provisions of Order 41, Rule 22, Civil Procedure Code, are not made applicable, this being a special appeal provided u/s 11(10)(c) of the Andhra Act which does not speak of any cross-objections. The only remedy of the employees, the learned Judge observed, was to have filed an independent appeal which they failed to pursue.

16. A similar question arose before a Division Bench of the Patna High Court in *Bokaro and Ramgur Ltd. and Others Vs. Kathara Coal Co. Ltd. and Others*, , under the Coal Bearing Areas (Acquisition and Development) Act, 1957. The learned Judges held that cross-objection by a person aggrieved by an award of a Tribunal is not maintainable, saying that a right of cross-objection is a creation of statute. Referring to the scope of Section 20 of that Act, it was observed that the only manner in which the determination by the Tribunal, viz., its award can be subjected to a review is by appealing against the whole or part of it u/s 20 and cross-objection is thus ruled out,

17. Chinnappa Reddy, J., considered the question whether Order 41, Rule 22, Civil Procedure Code, would apply to appeals u/s 110(d) of the Motor Vehicles Act in *Madras Motor and General Insurance Co. Ltd. v. Subba Reddi C.M.A.* Nos. 494 and 493 of 1972, dated August 6, 1973. The learned Judge held that the word "award" under the Motor Vehicles Act is not a decree within the meaning of Section 2(2), Civil Procedure Code, since the proceeding does not commence with presentation of a plaint to a Court. The Act does not also treat an award as a decree of a Court for the purpose of an appeal. In this connection reference was made to Section 96, Civil Procedure Code, and it was observed that Sub-section (i) of Section 96 applies only to suits filed in civil Courts.

18. The rulings referred to above support me in the view I have taken. I must also refer to the recent decision of the Supreme Court in *Asnew Drums Private Ltd. and Others Vs. Maharashtra State Finance Corporation and Others*, , relied on by the learned Counsel for the petitioner. The Court considered in that case the scope of Section 32 of the State Financial Corporation Act, 1951. It was held that the jurisdiction conferred on a District Judge under the Act is not as *persona designata*, By Sub-section (2) of Section 32 of that Act an order of attachment or sale of property is required to be carried into effect as far as practicable in the

manner provided in the Civil Procedure Code, for the attachment or sale of property in execution of a decree as if the Financial Corporation was the decree-holder. The Supreme Court held that this language employed in Sub-section (8) includes also the provisions in the Code dealing with appeals, since the word "manner" means method of procedure and to provide for an appeal is to provide for a mode of procedure. This decision does not help the revision petitioner before me because there is no analogous provision in the Payment of Wages Act. It follows, therefore, that the cross-objections filed by the revision petitioner before the District Court are not maintainable. The revision petition accordingly fails and is dismissed. In the circumstances of the case, I direct the parties to bear their own costs of the revision petition.

19. Before I part with the case I must express my appreciation of the valuable help rendered to me by the learned Counsel appearing on both sides.