
(2013) 09 MP CK 0069

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 542 of 2013

Pawan Kumar

APPELLANT

Vs

Power Grid Corporation of India Ltd. Company and Another

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 10, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 4
Electricity Act, 2003 — Section 164
Telegraph Act, 1885 — Section 10, 16

Citation : (2014) 1 MPJR 41 : (2014) 1 MPLJ 421

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : Rajeev Budholiya, for the Appellant; Praveen Surange, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Saxena, J.—This appeal u/s 104 read with order 43 Rule 1(r) of the CPC 1908 has been preferred by the plaintiff/appellant against an order dated 8th May 2013 recorded in Miscellaneous (Civil) Appeal No. 3/2013 by the First Additional District Judge, Jora (Morena) upholding the order dated 22nd February 2013 in Civil Suit No. 1A/2013 of the Civil Judge Class 1st Morena whereunder the trial court came to dismiss the application of the plaintiff moved under Order 39 Rule 1 & 2 of C.P.C. for grant of permanent injunction. The facts, in short, are that the defendant/respondent No. 1 Power grid Corporation of India Ltd. Company through Kalptaru Transmission Limited decided to construct a Tower in the agricultural field belonging to plaintiff which is comprised in Survey Nos. 1444 and 1445 and situated in village Bilgaon Chowdhary Pargana Jora for the purpose of laying high voltage electric line without following the provisions of law meant for the aforesaid construction. The plaintiff/appellant thus by submitting the application requested for issuance of injunction against the defendants but has lost in both the courts, hence, this appeal.

2. The contention of the appellant before this court is that the action taken by the defendants is illegal and without complying the provisions under which they are purporting to act. It is submitted that the defendants without authority of law are going to erect the Tower for raising overhead high voltage electric line. It is contended that no adequate compensation is given for use of the land which is legally owned and possessed by the appellant/plaintiff. It is submitted that both the courts have committed illegality in passing the orders which are not against the provisions of law. Hence, it is prayed that the defendants may be directed to provide compensation in accordance with law.

3. On the other hand, learned counsel for the respondents argued that there is no illegality or perversity in the order requiring any interference by this court. Accordingly, it is prayed that the appeal may be dismissed.

4. Having regard to the facts and circumstances involved in this case, the only point that arises for decision is whether second appeal is maintainable against the impugned order under Order 43 Rule 1(r) of the CPC or not?

5. In Civil Suit No. 1A/2013, an interlocutory application invoking Order XXXIX Rules 1 and 2 read with Section 151 of the Code was filed. From the order on such application, an appeal was carried to the first appellant court. Upon appeal being taken up, the order impugned has been passed.

6. It is imperative, at the outset, that the relevant provisions of the Code be noticed. Part VII of the body of the Code deals with appeals and is divided into five segments covering appeals from original decrees; appeals from appellate decrees; appeals from orders; general provisions relating to appeals; and, appeals to Hon. Supreme Court. Sections 104, 105 and Order 43 Rule 1(r) C.P.C. are of some relevance in the context which are reproduced below:

104. Orders from which appeal lies.-(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:-

(ff) an order u/s 35A;

(ffa) an order u/s 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;

(g) an order u/s 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to

have been made.

(2) No appeal shall lie from any order passed in appeal under this section.

Order 43 Rule 1. Appeals from orders

1. Appeals from orders.-An appeal shall lie from the following orders under the provisions of Section 104, namely:-

(r) an order under Rule 1, Rule 2, [Rule 2A], Rule 4 or Rule 10 of Order XXXIX;

7. In *Motilal and Another Vs. Bhandari*, while dealing with the matter, High court of Chhatisgarh observed as follows:-

Clause (i) of sub-section (1) of Section 104 provides that an appeal shall lie against an order made under rules from which an appeal is expressly allowed by rules. An appeal under Order 43, Rule 1 shall lie against the first order because the rule say that such an appeal shall be permissible. The law nowhere say that even against appellate order granting or rejecting the injunction, a second appeal is maintainable in the High Court. Sub-rule (2) above clearly bars an appeal against the appellate order.

This appeal is misconceived. It is accordingly dismissed. The plaintiffs shall however be at liberty to challenge the correctness, validity and propriety of the order in duly constituted proceedings if the law permits them.

8. In *P.S. Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. and Others*, , the Hon. Apex Court after considering the question regarding the maintainability of second appeal as barred u/s 104 CPC 1908 concluded as follows:-

142. The upshot of our decision would be:

(1) Finality clause contained in a statute, unless attached to an order passed in appeal, would not take away the right of appeal expressly provided for under the special statute;

(2) Letters Patent being a subordinate legislation has the force of law but the same is subject to an Act of Parliament;

(3) If an appeal is maintainable under subsection (1) of Section 104 of the Code, no further appeal therefore would be maintainable in terms of sub-section (2) thereof;

(4) A right of appeal being creature of a statute, it may provide for a limited right of appeal or limiting the applicability thereof.

(5) Clause 15 of the Letters Patent cannot override the bar created u/s 104 of the Code. Section 104(1) of the Code must be read with sub-section (2) of Section 104; and by reason thereof saving clause in relation to the Letters Patent would not be attracted. An attempt should be made to uphold a right of appeal only on harmonious construction of Sections 4, 104 and other provisions of the

Code.

(6) However, when an appeal is provided for under a Special Act, Section 104 of the Code shall have no application in relation thereto as it merely recognizes such right but does not provide for a right of appeal.

(7) If a higher status is given to a Letters Patent over a law passed by the Parliament including the Code of Civil Procedure, the same would run contrary to the history of the Letters Patent as also the Parliamentary Acts.

(8) The judgment of this Court must be read as a whole and the ratio therefrom is required to be culled out from reading of the same in its entirety and not only a part of it.

9. The question raised above may be answered rather simply by discovering that none of the provisions in the body of the Code, or anything in the rules appended thereto, permits an appeal from an interlocutory order passed in an appeal from a decree. The answer is no more difficult to make because of the absence in Section 96 of the Code (which provides for appeals from original decrees) of a provision similar to Section 104(2) of the Code, particularly since the prohibition u/s 105(1) thereof applies to all orders not specifically covered by Section 104(2) of the Code; and an interlocutory order in an appeal from a decree, by virtue of Section 105(1) of the Code, cannot be carried in appeal unless it is expressly provided for. In the context of the present discussion, the unavoidable implication of Section 105(1) of the Code is that only such orders passed in an appeal from a decree would be amenable to appeal as have been expressly provided for; or, if there is no express provision for an appeal from a certain order, there is no right of appeal. The embargo u/s 105(1) of the Code is not as uncompromisingly absolute as in Section 104(2) thereof; it only prohibits appeals from all appellate orders for which there is no express provision of appeal. The appeals recognised under Order XLIII Rule 1 of the Code from orders passed by a court of original jurisdiction cannot be understood to extend by implication to interlocutory appellate orders. Those appellate orders that are appealable are expressly provided for in Order XLIII Rule 1 itself.

10. Hence, after hearing learned counsel for the parties and further keeping in view the dictum laid down by the Apex Court as well as other High Court in the decisions referred to above, this Court is of the opinion that such orders and even the final order culminating the lis in the court of first instance would not be amenable to appeal unless expressly provided for in some statute. The mere extension of the procedural part of the Code to such proceedings by virtue of Section 141 of the Code cannot admit of a situation permitting an appeal therefrom under the Code. This court, therefore, finds that remedy of filing Appeal is not available to the appellant under the circumstances. Even otherwise, after perusing the provisions as contained in Section 10 and 16 of Indian Telegraph Act 1885 read with Section 164 Electricity Act 2003 since there appears to be a scope of consideration of grievance, the plaintiff shall be free to

avail such remedy as provided therein but not before this court by way of second appeal, which is expressly bared. Consequently, this appeal is dismissed at primary stage. No Costs.