

(1988) 08 BOM CK 0003

In the Bombay High Court

Case No : M.A. No's. 1 to 4 and 14 to 16 of 1988

Sashikala Vinayak Chawan and Others

APPELLANT

Vs

Tushar Purshottam Deolekar and Another

RESPONDENT

Date of Decision : 26-08-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 25, 3

Citation : (1988) 08 BOM CK 0003

Hon'ble Judges : B.G. Kolse-Patil, J

Bench : Single Bench

Advocate : George Kurien, A.P. Vaze and M.B. Kotak, for the Appellant; S.R. Singh, G.S. Hegde, A.A. Agarwal, N.B. Kamat, Indu Shroff and D.Y. Rane, for the Respondent

Final Decision : Allowed

Judgement

Kolse-Patil, J.—By these applications, the applicants pray for the transfer of their applications for claims pending before the various Claims Tribunals to Bombay for various reasons of convenience.

2. These applications u/s 24 of the Code of CPC are being disposed of by this common judgment as the point involved for my consideration is common. The applications are being vehemently opposed firstly on the ground that the Motor Accidents Claims Tribunal (hereinafter briefly referred to as "M.A.C.T.") is not a civil court for the purpose of Section 24 of the Code and secondly that it is not a court subordinate to the High Court.

3. According to the Respondents, the Division Bench of this Court in *Khairunnissa A.K. Saddiki v. Municipal Corporation, Bombay* 1966 ACJ 37 (Bombay), has held that M.A.C.T. is not a civil court. The question involved before the Division Bench was whether the application before the M.A.C.T. was a suit or otherwise and whether the applicant was under an obligation to give notice to the Bombay Municipal Corporation as a condition precedent for filing the said application. The

learned Judges in that case held that the application was not a civil suit and consequently the notice was not a condition precedent. It has, however, to be noted that much water, thereafter, has flown under the bridge and the Supreme Court in *Bhagwati Devi v. I.S. Goe* 1983 ACJ 123 (SC), has now held that the M.A.C.T. for the purpose of Section 25 of the Code is a civil court. The Supreme Court there, was also dealing with the transfer of an application for accident claim u/s 25 of the Code as in the present case. This Court (in Misc. Civil Application No. 47 of 1986) has also observed that in view of the decision of the Supreme Court in *Bhagwati Devi v. I.S. Goel* 1983 ACJ 123 (SC) and of the Karnataka Division Bench in *Noreen R. Srikantaiah v. L. Dasarath Ramaiah* 1985 ACJ 628 (Karnataka), the objection to the transfer has to be rejected. The learned single Judge has further held that the M.A.C.T. is also a civil court for the purpose of Section 24 of the Code. He, therefore, overruled the preliminary objection raised by the Respondents in that application. It is, therefore, clear that *Bhagwati Devi's* case 1983 ACJ 123 (SC), now puts the point outside the pale of controversy. Although the matters there arose in the context of the power of the court u/s 25 of the Code, to transfer suits and other proceedings, inter alia, from one "civil court" in one State to the other "civil court" in any other State, the law laid down then will equally apply to the proceedings u/s 24 of the Code.

4. The second question is whether the M.A.C.T. as a "court" is subordinate to the High Court for the purposes of Section 24. The circumstances that the M.A.C.T. is held to be a "civil court" should be sufficient to answer this question in the affirmative.

5. The Respondents, however, have relied on a catena of cases of different High Courts, to support their view, that the M.A.C.T. is not a "court" subordinate to the High Court. The view taken by the High Courts does not appear to be relevant in the facts and circumstances of the present applications under consideration. In the first place, the Supreme Court's observations in *Bhagwati Devi's* case 1983 ACJ 123 (SC), makes it clear by inference that the M.A.C.T. is a "court" subordinate to the High Court. In *Rajah of Venkatagiri Vs. Shaik Mahaboob Saheb and Others*, , the Division Bench dealing with the question whether the District Collector u/s 15(4) of the Madras Agriculturists Relief Act, 1938, was a "court" subordinate to the High Court, said: "Subordination is nowhere defined.... To say that the Collector's Court is a "civil court" within the meaning of this section will be a simple and complete solution of the problem. In our judgment, it is also the correct solution. The preamble to the Code indicates that it is an Act, to consolidate and amend the laws relating to the procedure of the courts of civil judicature...". From these provisions it seems that Section 3 of the Code must be interpreted as a comprehensive declaration, as a matter of corollary, of the subordination of "courts of civil judicature" to the High Court in the State. The M.A.C.T. when it is held to be a "civil court" should be regarded as a "court" subordinate to the High Court.

6. The Respondents in all these applications have not seriously challenged the

grounds set out in the applications for transfer except in Misc. Application No. 3 of 1988. The Respondents in this case have urged that all the witnesses are from Kolhapur, where the claim application is pending. The Respondent would examine the claimant (widow) by commission as she resides in Bombay. The submission of the Respondents cannot be appreciated for the simple reason that the claimant has to be given choice to choose her lawyer in the first place and she must be able to attend the court as and when it is necessary in the second place. Moreover, the applicant is a widow, who deserves help of this Court. The controversy is not with regard to the grounds of transfer but with the power of this Court to transfer from one Tribunal to another in the State.

7. We also cannot further lose sight of the fact that in most such cases, the applicants are either widows and/or minor children and/or parents, claiming compensation for the death of their sole bread-winner. An easy access to court is an aspect of social justice. And this is exactly what is claimed in these applications.

For the reasons aforesaid, all the applications are allowed. Rule in each case is made absolute.