

(2007) 11 KAR CK 0039

In the Karnataka High Court

Case No : W.A. No's. 1078, 1422, 1445 and 1526/07

Smt. Saraswati Koujalgi

APPELLANT

Vs

Sri Vasant Ramachandra Dulloli
 Smt. Tarabai Dand Vs
Eureka Builders and Others
 Ammanamma Vs K.S.
Naga Nanjunda Raje Urs and Others
 B.L.
Ananthakrishna Vs C.S. Basavaraju

RESPONDENT

Date of Decision : 07-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Karnataka High Court Act, 1961 — Section 10 (iv-a), 4, 9 (xii) (b)

Citation : (2008) 1 KarLJ 417 : (2008) 2 KCCR 633

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : S.P. Shankar, for R.G. Hegde, in W.A. No. 1078/2007, Lexplexus, in W.A. No. 1422/2007, Jayakumar S. Patil, for L. Govindraj, in W.A. No. 1445/2007 and B.A. Vani, in W.A. No. 1526/2007, for the Appellant; Mahesh Wodeyar, for C/R1-8 in W.A. No. 1422/2007, for the Respondent

Judgement

S.R. Bannurmath, J.—These writ appeals arise from different and independent orders passed by the learned Single Judge in the respective writ petitions, In these cases though parties are different, orders are unrelated, basically before the learned Single Judge various orders of Civil Courts have been challenged invoking the writ jurisdiction of this Court under Article 227 or Articles 226 and 227 of the Constitution of India. The learned Single Judge, who dealt with the respective writ petitions, has passed independent orders and aggrieved by the same, the individual parties have filed these writ appeals.

2. Though there is nothing common in respect of the decisions of the learned Single Judge in these writ petitions, they have been taken together for consideration, in the following peculiar circumstance. After filing the writ appeals, the Registry of the High Court has raised question of maintainability in each of these appeals, following a Full Bench judgment of this Court in the case of

Gurushanth Pattedar Vs. Mahaboob Shahi Kulburga Mills and Another, . In the judgment in the case of Guruhant Pattedar the Full Bench consisting of five Hon"ble Judges, have held that intra-court appeal lies u/s 4 of the Karnataka High Court Act, 1961 (The Act" for a short) only against the order of the learned Single Judge passed in exercise of original jurisdiction under Article 226 of the Constitution of India and not in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

3. On raising this question of maintainability by the Registry, the respective advocates for appellants have prayed for placing the matter before the Court to clarify the position and thus, these matters are before us.

4. As already noted since common question of law arise for consideration in all these appeals, they were taken up together for consideration.

5. We have heard the respective learned advocates appealing for the appellants, as well as learned Senior Counsel - Sriyuths S.K.V. Chalapathy, S.P. Shankar, S.S. Naganand and Start. T.N. Manjula Devi. On behalf of the respondents, Sri Jayakumar S. Patil, learned Senior Counsel appeared and made submissions in W.A. 1422/2007. Taking into account the submissions made by the learned advocates appearing for the appellants and the learned Senior Counsel, we requested the learned Advocate General, Sri Udaya Holla, to address the Court on the issue. We also requested learned Senior Counsel Prof, Ravivarma Kumar to assist the Court as Amicus Curiae. Acceding to our request, both the learned Advocate General and Sri Ravivarma Kumar made the submissions.

6. We have perused the records.

7. In the case of Gurushanth Pattedar, an interlocutory order passed in a civil suit by the learned civil judge, having been challenged in the writ petition and an interim order of status quo granted earlier by the learned single Judge, having been subsequently vacated, was the subject matter in the writ appeal u/s 4 of the Act. Noticing the Full Bench judgment rendered in the case of Ritz Hotels (Mysore) Ltd. Vs. State of Karnataka and Others, (wherein it was held that the writ appeal is maintainable), entertaining prima facie doubt about the law declared therein, the matter leaving been referred to the larger Full Bench, with a quorum of five learned Judges, the Full Bench disapproving the law laid down in M/S Ritz Hotel"s case, has been held as follows:

Going by the language used in Section 4 which has been reproduced in the earlier part of the judgment, we have no doubt in our mind that an appeal has been provided against an order of a single Judge only when it is passed in the exercise of his original jurisdiction, i.e. when he deals with a petition under Clause (1) of Article 226 of the Constitution. The right of appeal, as already observed, is a statutory light and where the statute has provided for an appeal only against an order of a single Judge passed in the exercise of his original jurisdiction, it has to be held that no appeal would lie against an order passed by him in the exercise of supervisory jurisdiction under Article 227 of the

Constitution. Neither the Rules nor the Forms prescribed by the High Court could override or control the provisions of Section 4 of the Act which alone provides for an intra-court appeal only against the orders passed in exercise of original jurisdiction. Moreover, Rules 2 and 26 of the Writ Proceedings Rules do not provide for an appeal against an order of a learned single Judge passed in the exercise of supervisory jurisdiction, In this view of the matter, we are of the opinion that the law laid down by the Division Bench of this Court in Kalpana Theatre's case (supra) was the correct law and that the Full Bench was not right in overruling the same. We have, therefore, no hesitation in holding that the law laid down by the Full Bench in Ritz Hotels case (supra) is not the correct law and we over rule the same and hold that no appeal lies u/s 4 of the Act against an order passed by a learned single Judge in a petition filed under Article 227 of the Constitution.

8. In the case of Sri Vishnu Ganapathi Naik Vs. The Management of NWKRTC, , a Division Bench of this court, while considering an appeal against the order made by the learned single Judge in a writ petition, in which petition the award passed by the Industrial Tribunal/Labour Court had been challenged, has held as follows: (paragraph 7)

In the instant case, it is not the case of the appellant that he had questioned the award passed by the Industrial Tribunal/ Labour Court under any one of the exceptions stated by the Full Bench of this Court in Gurushanth Pattedar Vs. Mahaboob Shahi Kulburga Mills and Another, . Therefore, in our opinion, the order passed by the learned single Judge necessarily is under Article 227 of the Constitution and therefore, no appeal would lie against the said order before this court.

9. W.A. 1777/01 in the case of State of Karnataka and Ors. v. Ramaswamy and Ors. was filed u/s 4 of "the Act" questioning the correctness of the order passed by the learned single Judge in writ petition, in which writ petition, the orders passed by the Karnataka Appellate Tribunal and the Deputy Commissioner, in a matter arising under the Karnataka Land Revenue Act, was challenged. The attention of the Division Bench was invited by the respondent in the appeal, to the law laid down in Gurushanth Pattedar's case and Vishnu Ganapathi Naik's case (supra), and it was contended that the appeal was not maintainable. The Division Bench not accepting the contention and by following the law laid down by the Hon'ble Supreme Court in the case of Suryadev Rai v. Ramachandra Rai and Ors. AIR 2003 SC 2044, has held as follows:

The Apex court has, after following its earlier constitutional bench judgment consisting of seven judges in L. Chandra Kumar Vs. Union of India and others, has dealt with the nature of power and judicial review conferred upon this Court under Article 226 and the power of superintendence conferred under Article 227. In view of the constitutional Bench judgment, which is referred by the Apex Court in the said judgment, the same has not been noticed by this court in the Full Bench decision of Five Judges upon which strong reliance is placed by the

learned Counsel for the respondents with regard to the original jurisdiction and scope of Article 226 and supervisory jurisdiction of this Court under Article 227 of the Constitution of India has not been examined in the light of the Constitutional Bench judgments referred to in Surya Devi Rai case as stated supra. Therefore, we prefer to accept the view taken by the Constitutional Bench judgments of the Apex Court, Therefore, we are required to answer the contention urged by the learned Counsel Mr. Rajagopal that writ appeal is not maintainable is not accepted by us and the same is wholly untenable in view of the judgment of the Supreme Court referred to supra.

10. The principal contentions advanced by the learned Senior Counsel and other learned advocates,, to hold the above writ appeals as maintainable are as follows:

11. Sri S.K.V. Chalapathy, learned Senior Counsel, contended that the Full Bench decision in Gurushanth Pattedar's case, has not taken into account, the law laid down by the Hon''ble Supreme Court in Suryadev Rai's case and thus, requires reconsideration. The learned Counsel particularly invited our attention to paragraphs 21 to 26, 29, 37 as well as the observations contained in paragraph 39, and would contend that the binding precedent under Article 141 of the Constitution is the law laid down in Suryadev Rai's case, which having not been noticed and applied in Gurushanth Pattedar's case, the same requires reconsideration.

12. Sri S.P. Shankar, learned Senior Advocate, contended that, the Division Bench while deciding W.A. 1777/01, by judgment dated 1.7.2006, has accepted the view taken in Suryadev Rai's case and also in the case of L. Chandra Kumar Vs. Union of India and others, , and has specifically overruled the objection regarding maintainability of the writ appeal. The learned Senior Counsel submitted that since another Division Bench has already taken the view that the writ appeal as maintainable, we are required to hold that these writ appeals also as maintainable, or the matters to be referred to a Full Bench for its consideration.

13. Sri Naganand, learned Senior Counsel, invited our attention to the judgment reported at Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, particularly to paragraphs 24 and contended that the Full Bench in Gurushanth Pattedar's case, has not taken into account the impact of the words contained in Section 9(xii)(b) and 10(iv-a) of "the Act", and further submitted that the judgment in Gurushanth Pattedar's case requires reconsideration. The learned Counsel contended that in view of the law declared by the Hon''ble Supreme Court, having not been noticed in Pattedar's case and as another Division Bench having taken the view that the writ appeal is maintainable in W.A. No. 1777/2001, this aspect requires to be referred to the Larger Bench for consideration.

14. Smt. T.N. Manjula Devi, learned Senior Counsel, contended that the writ appeals are maintainable in view of the provisions contained in Section 9(xii)(b)

and Section 10(iv-a) of "the Act". The learned Counsel also contended that the writ appeals are maintainable by drawing support from the judgment passed in W.A. 1777/01 dated 1.7.2006.

15. The learned Advocate General argued that the provisions of Sections 4, 9(xii) (b) and 10(iv-a) of "the Act" should be construed harmoniously and a decision taken in the matter.

16. Sri Jaykumar S. Patil, learned Senior Counsel appearing for the respondent in W.A. 1422/2007, submitted that the law having been laid down in Gurushanth Pattedar's case, by a larger Full Bench of this court, specially taking into account the amendments made to the Code of Civil Procedure, under Act 46/99 with effect from 1.7.2002, so far as matters arising from interlocutory orders passed by the civil courts, the jurisdiction that can be exercised is only one under Article 227 of the Constitution and as such, an intra Court appeal u/s 4 of "the Act" is not maintainable. The learned Counsel vehemently contended that the law laid down by the larger Bench should be followed, the same being a binding precedent and not the judgment dated 1.7.2006 rendered by the another Division Bench in W.A. 1777/01.

17. Sri Ravivarma Kumar, learned Senior Counsel, as Amicus Curiae submitted that the Constitution has vested the power in the High Court under Articles 225, 226, 227 and 228 of the Constitution, and thus it is for the court to regulate matters by framing appropriate rules, the power to frame rules being available under Article 225 of the Constitution. The learned Senior Counsel appearing as Amicus Curiae, stated that the procedure for filing of the intra Court appeal against the order passed by the learned single Judge having been provided under writ rules, the appeals may have to be held as maintainable. The learned Senior Counsel referred to the relevant entries in the three lists under the Seventh Schedule of the Constitution and the interpretation with regard to them in various decisions by the Hon"ble Supreme Court, regarding the powers and jurisdiction of the High Courts.

18. The learned Senior Counsels and other learned advocates, have referred to a large number of citations to contend that, the appeals are maintainable and/or to the effect that the judgment in Gurushanth Pattedar's case, as not being in conformity with the law laid down by the Hon"ble Supreme Court, and as such that the same requires reconsideration, We have not referred herein to all the citations relied upon by the learned Senior Counsel and other learned advocates, as we deem it appropriate not to render any finding on the several aspects sought to be canvassed, in the view, which we are presently taking.

19. In the case of State of Karnataka and Ors. v. H. Krishnappa and Ors. ILR 1975 KAR 1050, a Full Bench of this court has upheld the constitutional validity of Section 4 of "the Act" and has held that an appeal lies to the High Court against the order passed under Article 226 of the Constitution by the learned single Judge of the High Court.

20. Even though in Gurushanth Pattedar's case, the Full Bench has held that the writ appeal as not maintainable and the same was also followed and applied in Vishnu Ganapathi Naik's case by another Division Bench, while passing the judgment dated 1.7.2006 in W.A. 1777/01, the Division Bench therein has held that the Full Bench decision of the five learned Judges in Gurushanth Pattedar's case as having not noticed the Constitutional Bench judgment of the Hon''ble Supreme Court and has negatived the contention that the writ appeal is not maintainable. Holding that the writ appeal as maintainable, the judgment dated 1.7.2007 has been rendered, and the appeal has been deckled on merit Thus, it is apparent that the Division Bench in W.A. 1777/01, has not applied and followed the law laid down in Gurushanth Pattedar's case, but has held the same as having been rendered without noticing the Constitutional Bench judgment of the Hon''ble Supreme Court and as such, for practical purposes incorrect law.

21. The Hon''ble Supreme Court in the case of Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, taking into account the law laid down by the Constitutional Benches with regard to the binding nature of precedents etc., has summed up the legal position as follows:

12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) A bench of lesser quorum cannot the view taken by a Bench of larger quorum, In case of doubt all that, the Bench of lesser quorum can do Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(2) The above rules are subject to two exceptions: (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of hunting the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order

of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh and Ors. and Hansoli Devi and Ors. (supra).

(emphasis supplied by us)

22. The Hon'ble Supreme Court in the case of State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, , has held as follows:

10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that decision in the case of Ramkrit Singh (supra) was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh (supra) the Court did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to stay that an earlier decision may seem to be incorrect to a Bench of a co-ordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the latter bench of co-ordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.

11. In Dr. Vijay Laxmi Sadho Vs. Jagdish, it has been observed as follows:

As the learned single Judge was not in agreement with the view expressed in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of co-ordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law. It is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.

12. In Pradip Chandra Parija and Others Vs. Pramod Chandra Patnaik and Others, it has been held that where a Bench consisting of two Judges does not agree with the Judgment rendered by a Bench of three Judges, the only appropriate course available is to place the matter before another Bench of three Judge and in case

three Judge Bench also concludes that the judgment concerned is incorrect then the matter can be referred to a larger Bench of five Judges.

(emphasis supplied by us)

23. The Hon''ble Supreme Court in *Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha and Others*, , has ruled that a decision of a Constitution Bench, binds a Bench of 2 learned Judges of the Court and that judicial discipline obliges them to follow, regardless of their doubts about its correctness. It has been further held that at the most, the Division Bench could have ordered the matter to be heard by a Bench of 3 learned Judges.

24. The Hon''ble Supreme Court in the case of *Pradip Chandra Parija and Others Vs. Pramod Chandra Patnaik and Others*, a Bench of 2 learned Judges expressed dissent with another Bench of 3 learned Judges and directed the matter to be placed before a larger Bench of 5 Judges. A Constitutional Bench considering the railings on "judicial discipline and propriety" as also the theory of precedents, has held that it is only a Bench of the same quorum, which can question the correctness of the decision by another Bench of the co-ordinate strength or else the matter may be placed for consideration by a Bench of larger quorum. In other words, it is held a Bench of lesser quorum cannot express disagreement with or question the correctness of the view taken by a Bench of larger quorum. It is settled position of law that the view of law taken by the Bench of 3 Judges is binding on a Bench of 2 Judges and in case Bench of 2 Judges feels not inclined to follow the earlier 3 Judge Bench decision, then it is not proper for it to express such disagreement, it can only request the Hon''ble Chief Justice, for the matter being placed for hearing before the 3 Judge Bench, which may agree or disagree with the view taken earlier by 3 Judge Bench, The said view has been reiterated in number of cases by the Hon''ble Supreme Court.

25. The Hon''ble Supreme Court in a catena of cases has held that if a Bench with a smaller quorum, or a coordinate Bench finds that the law declared by a larger Bench or a co-ordinate Bench as requiring reconsideration on account of not noticing any statutory provision, or amendment of the statute, or the law laid down by the Hon''ble Supreme Court under Article 141 of the Constitution of India being not noticed, considered and/or explained, judicial discipline demands that the matter be referred to a larger Bench for decision in the matter, instead of sitting in judgment or expressing any kind of dissent

26. As a Division Bench, we are bound by the law laid down by the larger Full Bench in *Gurushanth Pattedar's* case. At the same time, the co-ordinate Bench in its judgment dated 1.7,2006 passed in W.A. 1777/01, has held that *Gurushanth Pattedar's* case, as having not noticed the Constitutional Bench judgment of the apex court has also held that the writ appeal as maintainable. In view of the said conflict, as a co-ordinate Bench, taking into account the law laid down by the Hon''ble Supreme Court in the cases stated supra, we deem It appropriate to refer the matter to the Hon''ble Chief Justice with a request to

constitute a larger Bench for resolving the conflict as to the binding nature of the law laid down in the cases stated supra.

27. Further, in our view, substantial questions of law of general importance touching the Constitution, organization, jurisdiction and powers of this Court, arise for consideration. the appellants have questioned the orders passed by the learned Single Judges in the writ petitions, by invoking the jurisdiction of this Court either under Article 227 of the Constitution of India or both under Articles 226 and 227 of the Constitution of India, i.e. both original and supervisory jurisdictions of this Court, By Karnataka Act No. 12 of 1973, certain amendments were made to "the Act" The material insertions by way of the said amendment, relevant to be noticed at this stage, are the following:

9. Other Powers of a single Judge:

The powers of the High Court in relation to the following matters shall be exercised by a single Judge, provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a bench of two Judges:

xxx

(xii) exercise of powers under

a) Clause (1) of Article 226 of the Constitution of India except where such power relates to the issues of a writ in the nature of habeas corpus; and.

b) Articles 227 and 228 of the Constitution of India.

10. Other Powers of a Bench of two Judges:

The powers of the High Court in relation to the following matters shall be exercised by a Bench of two Judges.

xxx

(iv-a) an appeal from any original judgment, order or decree passed by a single Judge in exercise of the powers under Clause (1) of Article 226. Article 227 and Article 228 of the Constitution of India,

(emphasis supplied by us)

28. Appeals from decisions of the learned single Judge of the High Court have been provided u/s 4 of the Act which reads as follows:

4. Appeals from decisions of a single Judge of the High Court:

An appeal from a judgment, decree, order or sentence passed by a single Judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other Judges of the High Court

29. All the provisions in the statute have to be given their true meaning and effect, or have to be harmoniously read and interpreted, is the law laid down by the Hon''ble Supreme Court. In the light of the judgment of the Full Bench reported at ILR 1975 KAR 1050, upholding the constitutional validity of Section 4 of the Act, the issue as to whether a writ appeal would lie to a bench of two Judges in exercise of the powers under Article 227 of the Constitution of India, keeping in mind the provision contained in Section 9(xii)(b) and 10(iv-a) of "the Act", also arises for consideration, Section 4 of the Act, wherein the right to file an appeal has been provided to a Bench consisting of two other Judges in respect of matters dealt by the learned single Judge not only in exercise of original jurisdiction but also under any law for the time being in force, has to be given harmonious interpretation. The provision contained u/s 9(xii)(b) and Section 10(iv-a), the purpose and scope thereof also acquires consideration.

30. Having given our anxious consideration to the contentions raised by the parties, the law laid down by the Apex Court referred to supra, we are of the opinion that these cases should be referred to a Full Bench of the High Court for its opinion on the following questions of law:

I. Whether the finding recorded by the Division Bench in W.A. 1777/2001 by judgment dated 1.7.2006 holding that the intra-court appeal as maintainable, which is contrary to decision of another Division Bench in Sri Vishnu Ganapathi Naik Vs. The Management of NWKRTC, requires reconsideration in the light of the pronouncement of the Full Bench in Gurushanth Pattedar's case?

II. In view of the amendment made to Sections 9 and 10 of the Karnataka High Court Act, i.e. in terms of Karnataka Act No. 12 of 1973, inserting Clauses 9(xii) (b) and 10(iva), whether an Intra court appeal u/s 4 of "the Act" is maintainable, on the order passed by a single Judge in exercise of the power under Article 227 or under Articles 226 and 227 of the Constitution of India?

III. Whether the law laid down in Gurushanth Pattedar's case requires reconsideration in view of pronouncement of the Hon''ble Supreme Court in Suryadev Rai's case?

Hence, we direct the Registry to place the matters before the Hon''ble Chief Justice for consideration.