

(1975) 04 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition No. 791 of 1973 in M. F. A. No. 34 of 1971

State of Himachal Pradesh and Another

APPELLANT

Vs

Smt. Bholi etc.

RESPONDENT

Date of Decision : 04-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 41 Rule 22, Order 41 Rule 22(2), 2(2), 96
Motor Vehicles Act, 1939 — Section 110, 110A, 110B, 110C(1), 110C(2)
Trade Marks Act, 1999 — Section 76

Citation : (1975) 4 ILR HP 334

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This petition has been filed by Smt. Bholi and others pointing out that when disposing of the miscellaneous first appeal this Court omitted to consider the cross objection filed by them, and it is prayed that an order may be passed on the said cross objection now.

2. The Motor Accident Claims Tribunal made an award dated September 14, 1971, u/s 110B of the Motor Vehicles Act, 1939. An appeal was filed by the State of Himachal Pradesh and the Commissioner of Transport, Himachal Pradesh, against the award. The appeal was registered as Miscellaneous First Appeal No. 34 of 1971. During the pendency of the appeal the present Petitioners, in whose favour the award has been given and who are Respondents to the appeal, filed a cross objection claiming, inter alia, that the Tribunal should have awarded interest on the amount of compensation at 6 per cent per annum from the date of the application for compensation u/s 110A of the Act to the date of payment. Other claims made in the cross objection were not pressed. The appeal was heard and on September 15, 1973, it was dismissed with costs. Inadvertently,

however, no order was made on the cross objection. The question which arises at the outset is whether an order can and should be made now on the cross objection.

3. It is urged by the learned Advocate-General for the State of Himachal Pradesh that the cross objection is not maintainable and the present petition must, therefore, fail. Shri R. K. Gupta, Advocate, for the Petitioners urges that as Section 110B of the Act provides for an appeal to the High Court from the award of the Tribunal it necessarily implies a right to file a cross objection under order 41 Rule 22 of the Code of Civil Procedure. After careful consideration, it seems to me that the learned Advocate-General is right.

4. Order 41 Rule 22 of the CPC does not apply, and the reasons are apparent. There is clear indication that the Code has not been made applicable to the proceedings of a Motor Accidents Claims Tribunal. Section 110C(1) of the Motor Vehicles Act empowers the Tribunal to follow such summary procedure in holding an enquiry on the application for compensation as it thinks fit. u/s 110C (2) the Tribunal has been conferred the powers of a civil court for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and for compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed. To that extent alone have the provisions of the Code been made applicable to proceedings before the Tribunal. Beyond that, the provisions of the Code as such cannot be invoked before the Tribunal. The provisions of order 41 Rule 22 of the Code which provide for a cross objection, cannot be availed of.

5. A cross objection, in the sense in which it has been used in order 41 Rule 22 of the Code, is in the nature of an appeal. A person aggrieved by part of the decree may appeal against it. Alternatively, he may file a cross objection to the decree if an appeal has already been filed by the rival party. It was observed by Sadasiva Ayyar. J. in *Alagappa Chettiar v. Chockalingam Chettiar* ILR 41 Mad. 904 that:

the right to file an appeal by way of memorandum of objection is an extension of the right of appeal which must, therefore, also be given by statute.

The form of cross objection also, as provided in order 41 Rule 22 (2) of the Code, indicates that that is the nature of a cross objection. It has to be in the form of a memorandum, and the provisions of order 41 Rule 1 of the Code, so far as they relate to the form and content of a memorandum of appeal, apply to a cross objection. Therefore, being in the nature of an appeal it is plain that a cross objection is a creature of the statute and that being so the statute must expressly provide for it. Unless the statute confers the right to file a cross objection, no cross objection will lie. Section 110D of the Act confers the right of appeal against an award, but it does not speak of a cross objection. In my opinion, no cross objection is maintainable against an award made u/s 110B of the Motor Vehicles Act. I am supported in this view by the observations of the

Patna High Court in Bokaro and Ramgur Ltd. and Others Vs. Kathara Coal Co. Ltd. and Others, Shri R. K. Gupta has referred me to Delhi Transport Undertaking v. Raj Kumari 1972 A.C.J. 40 where a learned single Judge of the Delhi High Court has held to the contrary. The Delhi High Court followed the decision of the Madhya Pradesh High Court in Munjula Devi Bhutta v. Manjusri Raha 1968 A.C.J. 1 where that Court held that a cross objection can be filed in an appeal u/s 110D of the Act, because as soon as the Court becomes seized of an appeal, even where an appellate jurisdiction is conferred under a special statute the rules of practice and procedure of the Court applicable to a civil appeal, would, in the absence of any specific rule to the contrary, govern such appeal. The Madhya Pradesh High Court relied on Secretary of State for India v. Chelikani Ram Rao A.I.R 1916 P.C. 21 and National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), It is necessary to be clear about the facts in the latter case. The Registrar of Trade Marks made an order, and an appeal was filed to the Bombay High Court u/s 76, Trade Marks Act. The appeal was allowed by a learned single Judge, and against his judgment an appeal was preferred under Clause 15 of the Letters Patent of the Bombay High Court. The Letters Patent Appeal was allowed. In the appeal before the Supreme Court thereafter the question was raised whether the appeal against the judgment of the learned single Judge was maintainable under Clause 15 of the Letters Patent. The Supreme Court held that it was. It proceeded on the principle that after the appeal had reached the High Court u/s 76 of the Act it had to be determined according to the practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court was constituted and which conferred on it power in respect of the method and manner of exercising that jurisdiction. Being seized of the appellate jurisdiction conferred by Section 76 the High Court had to exercise that jurisdiction in the same manner as it exercised it through appellate jurisdiction, and when such jurisdiction was exercised by a single Judge his judgment became subject to appeal under Clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act. In taking this view, the Supreme Court referred to National Telephone Co. Ltd. v. Postmaster General 1913 AC 546 in which it was observed that:

when a question is stated to be referred to an established Court without more, it...imports that the ordinary incidents of the procedure of that Code are to attach, and also that in general the right of appeal from its decision likewise attaches.

Reference was also made to the opinion of the Privy Council in AIR 1948 12 (Privy Council) where it was said:

Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under special statute which does not in terms confer a right to appeal.

The Privy Council held that the order made by the trial court amounted to a decree within the meaning of Section 2(2), Code of Civil Procedure, and an appeal would lie against such order u/s 96 of the Code. The High Court dismissed the appeal in the belief that it was incompetent. The Privy Council held that the High Court was in error and it was in that context that the observations upon which the Supreme Court has relied were made. The other case referred to by the Supreme Court was *Secretary of State for India v. Chelikani Rama Rao* (supra) from which the following observations were extracted:

It was contended on behalf of the Appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their lordships opinion this objection is not well founded. Their view is that when proceedings of this character reached the District Court, that court is appealed to as one of the ordinary courts of the country, with regard to whose procedure, orders and decrees the ordinary rules of the CPC apply.

In that case the facts were these. Under the Madras Forest Act the Forest Settlement Officer rejected a claim made to land within a certain area. The Act provided an appeal to the District Court, and the appeal preferred by the claimant was rejected. No further appeal was provided by the Act. Before the Privy Council it was contended that after the decision of the District Court all further proceedings in the Courts in India by way of appeal were incompetent. Repelling the contention the Privy Council observed that an appeal lay thereafter to the High Court on the principle that when proceedings of that character reached the District Court that Court was appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders and decrees the ordinary rules of the CPC are applicable.

6. It will be noticed that in all these cases the question was whether a further proceeding by way of appeal lay against a decision of the Court, be it a District Court or the High Court, and it was held that such proceeding was competent. In the present case, however, the question is whether a cross objection filed by the present Petitioner is maintainable. A cross objection in an appeal cannot be likened to a further appeal arising out of the initial appeal. A cross objection lies at the same level of relief as the appeal in which it is filed. The principle on which the aforesaid cases proceeded is attracted where a further right of appeal is claimed against the decree passed on the initial appeal.

7. I have examined a number of cases, AIR 1940 292 (Nagpur) AIR 1943 38 (Oudh) *Tazuddin Ahmed Vs. Dhaniram Talukdar*, , *Ramasray Singh and Others Vs. Bibhisn Sinha and Others*, , *Inayatullah Khan Vs. Diwanchand Mahajan and Others*, and *Akshya Narayan Praharaj Vs. Maheswar Bag*, All these are cases where the Court held the CPC to apply and, therefore, order 41, Rule 22 came into play. The present is a case where only limited provisions of the Code apply, and order 41 Rule 22 is not one of them.

8. It will also be noticed that order 41 Rule 22 contemplates a cross objection where there is a decree and an appeal has been filed against part of the decree. A "decree" has been defined by Section 2(2) of the CPC to mean:

the formal expression of an adjudication which, so far 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....

A decree is passed in a suit.

As the Privy Council observed in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63

The word "suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint.

It is clear from Section 110 of the Motor Vehicles Act that the authority constituted by the State Government thereunder is a Tribunal and not a court. A proceeding before that Tribunal is commenced by an application for compensation u/s 110A. The application is not envisaged as a plaint. The form and content of a plaint are provided in orders 6 and 7 of the Code. After the Tribunal has entertained the application for compensation and has held an enquiry into the claim made by it, it makes an award u/s 110B. Inasmuch as the award is not the formal expression of adjudication in a suit, it is not a decree. There is no decree, and therefore no question arises of filing any cross objection in terms of order 41 Rule 22 of the Code.

9. On the aforesaid consideration, I hold that no cross objection lies in an appeal filed u/s 110D of the Motor Vehicles Act.

10. The cross objection by the present Petitioner is not maintainable. It is a void proceeding and therefore, need not be considered on the merits.

11. In the circumstances this miscellaneous petition is dismissed, but there is no order as to costs.