
(2007) 05 AHC CK 0167

In the Allahabad High Court

Case No : Writ Petition No. 2895 (M/S) of 1999

Union of India and others

APPELLANT

Vs

Chitralekha Tripathi and others

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Railway Claims Tribunal Act, 1987 — Section 15, 24, 28

Citation : (2007) 05 AHC CK 0167

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri Anil Srivastava learned Counsel for the petitioners, Sri C.B Pandey learned Counsel for opposite parties No. 1 to 4 and learned Standing Counsel for opposite party No. 5.

2. The petitioner which is Union of India is aggrieved against the order dated 21.1.1999 passed by Illrd Additional Civil Judge (Senior Division) Lucknow in Original Suit No. 130 of 1993 Smt. Chitra Lekhi Tripathi and others v. Union of India and others.

3. Learned Counsel for the petitioners contends that the respondents had filed a suit for compensation to the extent of Rs. 30,00,000 from Railways due to death of Harendra Nath Tripathi in Seyaldah Express wherefrom he had fallen out of the train and died. The accident occurred on 8.1.1989 and the suit was filed on 23.1.1990 before the Court of Civil Judge, Lucknow (as a pauper). The Trial Court proceeded to frame as many as four issues and had decreed the suit of the defendants for a sum of Rs. 6,00,000 plus interest by the impugned judgment and order. Learned Counsel for the petitioners contends that in view of the provision of section 15 read with section 24 and section 28 of the Railways Claims Tribunal Act, 1987 the jurisdiction of the Civil Court was barred and all matters pending before the Civil Court with respect to claims as defined under section 123 of the Act would be transferred to the Claims Tribunal and as such

the Civil Court would cease to have jurisdiction to proceed with the suit or entertain a fresh suit. The first contention is, therefore, that the impugned order which has been passed after the amendment of the Act by Act No. 28 of 1994 with effect from 1.8.1994 could not have been passed by the Civil Court which had ceased to have jurisdiction with respect to the suit for compensation. He further contends that the impugned order being without jurisdiction in view of the aforesaid amendment the petitioners were not required to file any appeal as provided under the Code of Civil Procedure as in the case of a decree in a regular suit and that even the appeal, if filed, would not confer any jurisdiction upon the Court.

4. Learned Counsel for the respondents has disputed the aforesaid arguments and has contended that the jurisdiction of the Civil Courts could not have been ousted because the claim made by the respondents was to the tune of Rs. 30,00,000 whereas the jurisdiction of the claims Tribunal is maximum upto Rs. 2,00,000 (now revised to Rs. 4,00,000). The second contention is that the amendment came into effect from 1.8.1994, the accident in question had taken place on 8.1.1989 and the suit was filed on 23.1.1990 therefore prior to the amendment the Civil Court had jurisdiction to entertain the suit for compensation and hence, it would be wrong to say that with the enforcement of the amendment with effect from 1.8.1994, the Civil Court would be deprived of such jurisdiction. His further contention is that it was incumbent upon the petitioners to raise the issue of jurisdiction specifically before the Trial Court and get the same decided. The petitioners cannot be permitted to raise the issue in a proceedings under Article 226 of the Constitution of India for the first time. He further contends that the nature of the accident which has caused the death of bread earner of the family cannot be covered under the definition as given in section 123 of the Act and as such the suit was maintainable.

5. In support of his contention learned Counsel for the respondents has relied upon a decision of Hon^{ble} Supreme Court in the case of Dcvinder Singh and others v. State of Haryana and another 2006 (5) SCC 720 = 2006 (44) AIC 732 (SC). and placing reliance on paragraph 14 of the judgment he contends that even where the Special Tribunals have been given power under the statute and their orders have been given finality, the Civil Court's jurisdiction can be regarded to have been excluded only if the Special Tribunal had power to grant such relief; which the Civil Court would normally grant in a suit and if the answer is that the Tribunal would not have the power to grant such relief as the Civil Court would normally have then it will be difficult to imply or infer that the jurisdiction of the Civil Court to that extent stood excluded. Para 14 of the aforesaid judgment is quoted below:

"14 (14) Thirdly, having regard to the principle stated by this Court while enunciating the first proposition in Dhulabhai case it is clear that even where the statute has given finality to the orders of the Special Tribunal the Civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy

to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the Special Tribunal one will have to see whether such Special Tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of the Civil Court's jurisdiction. Now take the case of an applicant who has applied for a ryotwari patta under section 11 staking his claim thereto on the basis of his long and uninterrupted possession of the ryoti land but the Settlement Officer on materials before him is not satisfied that the land in question is ryoti land; in that case he will refuse the patta to the applicant. But can he, even after refusal of the patta, protect the applicant's long and uninterrupted possession against the Government interference? Obviously, he cannot, for it lies within his power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But such a person even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely because granting such relief the Civil Court may have to adjudicate upon the real nature or character of the land if the same is put in issue. In other words since the Settlement Officer has no power to do what the Civil Court would normally do in a suit it is difficult to imply ouster of the Civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under section 64C of the Act."

6. Learned Counsel for the respondents has further relied upon a decision of the Supreme Court in the case of *Ramesh Chand Ardawatiya v. Anil Panjwani* 2003 (7) SCC 350 = 2003 (51) ALR 699 (SC) = 2003 (7) AIC 625 and placing reliance on para 19 of the judgment he contends that Civil Court would not suffer from any inherent lack of jurisdiction where there is a Special Tribunal conferred with jurisdiction to try a particular class of cases even then the Civil Court can entertain a civil suit of that class on availability of a few grounds therefore, an exclusion of the jurisdiction of the Civil Court is not to be readily inferred. Paragraph 19 of the aforesaid judgment is quoted below:

"19. We, find, as would be dealt with hereinafter, the first two pleas devoid of any merit, but partial merit in the last plea. As to the first submission, we find that the Civil Court does not suffer from any inherent lack of Jurisdiction. Where there is a special tribunal conferred with jurisdiction or exclusive jurisdiction to try a particular class of cases even then the Civil Court can entertain a civil suit of that class on availability of a few grounds. An exclusion of jurisdiction of the Civil Court is not to be readily inferred. See *Phulabhai v. State of M.P.* An objection as to the exclusion of the Civil Court's jurisdiction for availability of alternative forum should be taken before the Trial Court and at the earliest, failing which the higher Court may refuse to entertain the plea in the absence of proof of prejudice."

7. It has also been contended by learned Counsel for the respondent that there

are laches in filing of the present writ petition and as such it ought to be dismissed on the aforesaid ground alone.

8. Having considered the submission of learned Counsel for the petitioners and learned Counsel for the respondents, it will be seen that so far as the plea of laches is concerned, the petitioners have given explanation in paragraphs 24 to 26 of the affidavit filed in support of the writ petition and this writ petition was entertained by this Court and an interim order dated 13.10.1999 had been passed whereby the further proceedings in the suit had been stayed and the petitioners were required to deposit Rs. 1,50,000 before the Court, It will, therefore, be seen that this writ petition has, been pending for the last eight years and the petitioners have been raising the question of inherent jurisdiction of the Trial Court. Therefore the objection of laches in filing this writ petition cannot be accepted.

9. At the first instance the impugned judgment and decree is found to be appealable under the provisions of Code of Civil Procedure. However, the contention of learned Counsel for the petitioners is that when the Court has lack of inherent jurisdiction, the parties could not be compelled to file an appeal against such an order wherein the Appellate Court itself would suffer from the defect of jurisdiction. In support of his contention he has placed reliance upon the provisions of section 15, section 24 and section 28 of the Railways Claims Tribunal Act, 1987. The aforesaid sections are quoted hereunder:

"15. Bar of Jurisdiction. On and from the appointed day, no Court or other authority shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to in (subsections (1) and (1A)) of section 13.

24. Transfer of pending cases. (1) Every suit, claim or other legal proceeding (other than an appeal) pending before any Court, Claims Commissioner or other authority immediately before the appointed day (or, as the case may be, the date of commencement of the provisions of subsection (1A) of section 13), being a suit, claim or proceeding for cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day (or, as the case may be, the date of commencement of the provisions of subsection (1A) of section 13), within the jurisdiction of the Claims Tribunal, shall stand transferred on (that day or, as the case may be, date) to the claims Tribunal.

(2) Where any suit, claim or other legal proceeding stands transferred from any court, Claims Commissioner or other authority to the Claims Tribunal under subsection (1):

(a) the Court, Claims Commissioner or other authority shall as soon may be after such transfer, forward the records of such suit claim or other legal proceeding to the Claims Tribunal;

(b) the Claims Tribunal may, on receipt of such records, proceed to deal with

such suit, claim or other legal proceedings, so far as may be, in the same manner as an application, from the stage which was reached before such transfer or from any earlier stage or de novo as the Claims tribunal may deem fit.

28. Act to have overriding effect. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

10. From a perusal of the aforesaid provisions, it will be seen that under section 24 the amendment has provided that the cause of action whereon the proceedings or suit is based is such that it would have been, if it had arisen after the appointed day (1.8.1994), within the jurisdiction of the Claims Tribunal then it would stand transferred to the Claim Tribunal for its decision. Upon such an event and upon such a claim as has been contemplated under the Act, the jurisdiction of the Civil Court would stand barred in relation to the matters referred therein. Consequently the provisions of the Railway Claims Tribunal Act, 1987 would have effect notwithstanding anything inconsistent contained in any other law for the time being in force. It is in view of the aforesaid provisions of the Act that the controversy in the present case has to be decided.

11. Admittedly, the accident occurred in 1989 and the civil suit was filed in the year 1990. The amendment came with effect from 1.8.1994 when the suit was pending. The petitioners' plea that the suit was liable to be transferred from the Civil Court is primarily based upon section 24 of the Act. In reply to this contention, learned Counsel for the respondents submitted that prior to any transfer under section 24, the Civil Court would have to determine as to whether this suit was required to be transferred to the Claims Tribunal and whether it related to the death due to an untoward incident, therefore, such issue ought to have been raised before the Trial Court if the petitioner was seeking a transfer of the suit to the Claims Tribunal. The reliance placed by learned Counsel for the respondents in the decision of Hon'ble Supreme Court in the case of Devinder Singh and others (supra) is with respect to Haryana Ceiling on Land Holdings Act. The said Act provides that no Civil Court shall have the jurisdiction to entertain or proceed with a suit for specific performance of contract for transfer of land which affects the right of the State Government to the surplus area under the Act which is to be dealt with and required to be settled by the Financial Commissioner the Commissioner, the Collector or the prescribed authority. While considering the provision the Hon'ble Supreme Court held that exclusion of the jurisdiction of the Civil Court cannot be readily inferred but must either be explicitly expressed or clearly implied. It was also held that adequacy or the sufficiency of the remedies under the Act may be relevant but cannot be decisive to sustain the jurisdiction of the Civil Court. The jurisdiction of the Civil Court when expressly barred would be excluded but where such power of the Tribunal is not excessive to that of the jurisdiction of the Civil Court it will be difficult to imply that such jurisdiction of the Civil Court is ousted. In the case of Ramesh Chand Ardawatiya (supra)

Hon''ble Supreme Court has clearly held that where a Special Tribunal has been given jurisdiction or exclusive jurisdiction to try a particular class of cases even when the Civil Court can entertain a civil suit of that class on availability of grounds beyond the jurisdiction of the Tribunal.

12. From a perusal of the impugned judgment, it cannot be disputed by learned Counsels that as many as four issues were framed by the Trial Court. The first issue was whether the plaintiff are entitled to compensation to the tune of Rs. 30,00,000. The second issue was whether the deceased had exercised due care and caution during his journey. The third issue was whether the deceased was under intoxication at the time of accident and the fourth issue was as to whether the plaintiff is entitled to any other relief. The Trial Court decided the said issues in favour of the respondent and has awarded the compensation of Rs. Six lacs plus simple interest and the Tribunal under the Act would have no jurisdiction for awarding compensation of an amount more than Rs. 2,00, 000 (Now Rs. 4,00,000). Therefore, according to the submissions the Tribunal having limited pecuniary jurisdiction could not oust the jurisdiction of the Civil Court which could be awarded compensation without any limit in its jurisdiction.

13. In order to bring the claim within the four corners of the Act, it would be necessary to establish that the conditions as mentioned in section 123 (1) (c) or 124A have occurred. Therefore in case such incident does not come within the definition of section 123 (1) (c) or 124A, the Claims Tribunal would not have any jurisdiction and the civil suit cannot be said to be barred under the provision of section 15 of the Act. Any civil suit for compensation pending before the Civil Court where neither the incident is an untoward incident nor the amount of compensation claimed or awarded is within the pecuniary jurisdiction of the Tribunal. The Civil Court would continue to exercise its jurisdiction as has been held by Hon''ble Supreme Court in the aforesaid cases.

The argument that by virtue of section 24, the present suit ought to have been transferred to the Claims Tribunal is not very appealing inasmuch as in order to exclude the jurisdiction of the Civil Court the necessary jurisdiction of the Claims Tribunal under the Railway Claims Tribunal u.i Has to be first determined. Once the jurisdiction of the Claims Tribunal in relation to the case is determined, it is only to that extent that the jurisdiction of the Civil Court would be ousted.

14. In the present case no such objection has been pleaded by the petitioners before the Trial Court. Hence if the incident does not fall under section 123 or 124A the jurisdiction of the Tribunal would be ousted and the suit for compensation would fall within the jurisdiction of the Civil Court. Consequently unless the subject matter of the suit fall within the jurisdiction of the Tribunal the suit could not have been transferred under section 24 of the Act nor the jurisdiction of the Civil Court could be said to have been barred under section 15 of the Act. To such effect the law laid down by Hon''ble Supreme Court is absolutely clear in its application to the present case.

15. For the said reasons the impugned order does not suffer from any error whatsoever. The writ petition has no merit. It is accordingly dismissed. No order is passed as to costs.