
(2010) 12 MP CK 0005
In the Madhya Pradesh High Court
Case No : Civil Revision No. 94 of 2005

Union of India

APPELLANT

Vs

M.P. State Electricity Board

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 21, 21A, 47
Railway Claims Tribunal Act, 1987 — Section 13, 13(1), 13(1)(b), 15
Railways Act, 1989 — Section 124A

Citation : (2011) 1 MPHT 359

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; K.N. Gupta and Mr. Anmol Khedkar, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—This civil revision has been preferred by the revisionist against the order dated 16-3-05 passed by the Court of III Additional District Judge, Gwalior in Execution Case No. 117-B/94 x 04, rejecting thereby its application u/s 47 read with Section 151 of the CPC dated 3-11-04. Briefly stated relevant facts are that M.P. State Electricity Board instituted a suit against revisionist for recovery of Rs. 40054/- with allegations that it purchased cement bags from M/s. Diamond Cement Factory, Damoh which were transported by Railways vide Railway Receipts (R.R. No. 134340-134343). They reached destination at Gwalior on 27-7-86. Railways freight to the tune of Rs. 92,222/- was already paid at the time of booking of cement bags, however, Railway Receipts were not received by the plaintiff due to postal delay. Consequently, the plaintiff could get the delivery on payment of freight to the tune of Rs. 74,175/- as per the order of Chief Goods Supervisor. Accordingly, delivery of cement bags was obtained on 23-7-86 by making payment and furnishing I-bond. Plaintiff after receiving the original railway receipts through postal services came to know that the payment of freight was already made. This being so, plaintiff vide letter

dated 26-11-86 asked the defendant to refund Rs. 74,175/-. Demand was repeatedly made by various letters. Ultimately, plaintiff issued notices dated 15-7-88 and 25-2-89 demanding thereby refund of Rs. 74,175/- and interest to the tune of Rs. 40,054/-. Defendant made the payment of Rs. 74,175/-. According to the plaintiff, accrued interest to the tune of Rs. 40,054/- was adjusted by the plaintiff from the amount of Rs. 74,175/- which was received by way of refund. Resultantly, the plaintiff sued for a sum of Rs. 40,054/- with interest from the date of suit at the rate of 18% per annum.

2. Defendants/revisionists submitted their written statement stating therein that the plaintiff was not having the original railway receipts when the cement bags reached the destination at Gwalior. Therefore, it was asked to make payment of freight to the tune of Rs. 74,175/- with an I-bond. Railway freight was liable to be refunded on submission of original railway receipts. Since there was no agreement with regard to interest on the amount of freight deposited by the plaintiff at the time of obtaining delivery, no interest was and is liable to be paid. This being so, the sum of Rs. 74,175/- was liable to be refunded as has already been duly refunded to the plaintiff. This apart, it was stated in specific that the Civil Court has no jurisdiction because it does not act as a Railway Claims Tribunal and the suit is liable to be dismissed for want of jurisdiction.

3. Learned Trial Judge by the judgment and decree dated 26-9-01 granted a decree in favour of the plaintiff/respondent for interest on a sum of Rs. 74,150/- @ 9% p.a. with effect from 6-11-86.

4. The decree was put into execution.

5. Judgment debtor/revisionist submitted an application u/s 47 read with section 151, CPC that the Civil Court had no jurisdiction to grant a decree by virtue of Sections 13 and 15 of the Railway Claims Tribunal Act, 1987. Accordingly, the impugned decree being nullity, the execution case is liable to be dismissed. It was opposed by the decree holder/ respondent.

6. Learned Executing Judge by the impugned order held that an objection about jurisdiction was raised by the judgment debtor/revisionist in the Trial Court which was decided as issue No. 4 in favour of the decree-holder/respondent. No appeal was preferred against such judgment and decree and, therefore, it has attained finality. Accordingly, the decree in question has been found to be executable. Hence, the present revision.

7. Shri N.K. Gupta, learned Counsel for revisionists and Shri K.N. Gupta, learned Senior Counsel for respondent made their respective submissions, which have been considered in the succeeding paragraphs.

8. It is contended on behalf of the respondent as a preliminary submission that objection about jurisdiction was already raised in the form of issue No. 4 before the Trial Court which was decided in favour of the respondent. In view of this, it is not now open to the revisionist to raise such an objection again.

9. On perusal, it is observed that the issue deciding jurisdiction was not decided on merits but the same was decided in favour of the respondent on account of having been not pressed. Learned Trial Judge while rendering the judgment and decree dated 26-9-01 has observed in Paragraph 13 that the defendant has raised objection in Paragraph 7 of its written statement about territorial jurisdiction. Copy of written statement is on record which shows that the revisionist had clearly objected the competence of the Civil Court for want of jurisdiction on the ground that it does not act as Railway Claims Tribunal. Objection about the jurisdiction with reference to place of suing (i.e., territorial jurisdiction) of pecuniary jurisdiction may be raised u/s 21 of CPC. Section 21 and Section 21 -A of CPC are reproduced for convenience:--

21. Objections to jurisdiction.-- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the Executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Executing Court at the earliest possible opportunity, and, unless there has been a consequent failure of justice.

21-A. Bar on suit to set aside decree on objection as to place of suing.-- No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, or any ground based on an objection as to the place of suing.

Explanation :-- The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.

Since the objection raised by the defendant/revisionist was not with reference to territorial jurisdiction or pecuniary jurisdiction, it cannot be said that it is not open for judgment debtor to challenge the decree on the ground of lack of inherent jurisdiction. Learned Executing Judge has, thus, committed an error in not understanding the nature of objection at all Section 21 and 21-A would apply only in case of objection about territorial jurisdiction or pecuniary jurisdiction and not in the case of lack of inherent jurisdiction.

In The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another, , it has clearly been observed in Paragraph 3:--

3.... As a general rule, neither consent nor waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit...

10. It has further been contended that issue No. 4 pertaining to jurisdiction was already decided by the Trial Court while passing the judgment and decree in favour of the plaintiff. Therefore, it would operate as res judicata at execution stage.

Suffice it to say that a judgment and decree passed by the Court which lacks inherent jurisdiction is a nullity and the same would never operate as res judicata. I may successfully refer to the following observation of the Hon''ble Supreme Court of India in the case of National Institute of Technology and Others Vs. Niraj Kumar Singh, -

22....It is well known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being a nullity.

11. There is a marked distinction between a decree, which is void and the decree which is wrong. A Court having jurisdiction is empowered to pass a decree right or wrong, legal or illegal. However, if a Court lacks inherent jurisdiction, it is powerless and a decree passed by such a Court is nullity being void. The Apex Court has also clarified this distinction in the case of Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, , in following words:--

9. The main question which arises for our consideration is whether the decree passed by the Trial Court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the Court goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.

12. Crucial question in the case is whether the judgment and decree put into execution in the present case is merely illegal and irregular or is null and void. An erroneous or illegal decree, which is not void cannot be obviously objected in execution or collateral proceedings. Objection about the decree in question being nullity has been raised in the light of Sections 13 and 15 of the Railway Claims Tribunal Act, 1987, which are reproduced below:--

13. Jurisdiction, powers and authority of Claims Tribunal.--

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any Civil Court or a Claims Commissioner appointed under the provisions of the Railways Act,-

(a) relating to the responsibility of the Railway Administration as carriers under Chapter VII of the Railways Act in respect of Claims for--

(i) Compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a Railway Administration for carriage by railway;

(ii) Compensation payable u/s of the Railways Act or the Rules made thereunder; and

(b) in respect of the claims for refund or fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a Railway Administration to be carried by railway.

(1-A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989 (24 of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any Civil Court in respect of claims for compensation now payable by the Railway Administration u/s 124A of the said Act or the rules made thereunder.

(2) The provisions of the Railways Act, 1989 (24 of 1989) and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act.

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 sub-sections (1) and (1-A) of Section 13.

Section 13 (supra), describes the jurisdiction, powers and authority of the Claims Tribunal whereas Section 15 excludes the jurisdiction of the Court or other authority in the matters referred to in sub-sections (1) and (1-A) of Section 13 of the Act.

13. It has been contended on behalf of the respondent that the suit by the respondent was instituted for recovery of interest and was not covered in any of the clauses enumerated in Section 13. This Court is required to examine the nature of the claim in order to adjudge the applicability of Sections 13 and 15. This Court feels it proper to reproduce Paragraphs 6, 7 and 8 of the plaint:--

On perusal of the aforesaid, it is clear that a sum of Rs. 74,175/- was paid by the plaintiff while obtaining delivery of cement bags from Railway Station, Gwalior. Since the freight was prepaid at the time of booking of consignment, the plaintiff/

respondent on receipt of original railway receipts produced the same before the defendant/revisionist and made a request for refund of the said amount with interest @ 18% per annum. Defendant/ revisionist made the refund of the entire sum to the tune of Rs. 74,175/-. Plaintiff/respondent appropriated/adjusted Rs. 40,054/- towards interest from the money paid to him (i.e., Rs. 74,175/-) and sued for balance principal amounting to Rs. 40,054/- (obviously the balance freight money). It has expressly and specifically been so pleaded in Paragraph 8 of the plaint. Since the defence of the defendant/revisionist was that there was no agreement for payment of interest, it seems that the plaintiff/respondent in order to avoid the responsibility of proving the agreement about interest, unilaterally appropriated the amount of interest at its own from the refunded money and sued for the refund of the balance freight amount. This is also clear from the Trial Court's judgment wherein no issue was raised on the question of rate of interest allegedly payable by the defendant according to the agreement or as per market practice. There was no adjudication by the Trial Court about the plaintiff's entitlement to recover the sum of Rs. 40,054/- as interest from the defendant/revisionist. Accordingly, in view of the specific Paragraphs 6, 7 and 8 of the plaint it is found that the suit of the plaintiff was for the refund of balance freight amount to the tune of Rs. 40,054/- and the learned Executing Judge has committed an illegality in deciding the objection u/s 47 without considering the aforesaid specific plaint averments.

14. Clause (b) of sub-section (1) of Section 13 of the Railway Claims Tribunal Act, 1987 clearly empowers the Claims Tribunal to entertain the claim in respect of the refund of any freight paid in respect of animals or goods entrusted to the Railway Administration to be carried by the Railway. This being so, the jurisdiction of Civil Court to entertain the suit for refund of freight stands excluded by virtue of Section 15 of the said Act. The Executing Court has passed the impugned order without even considering Sections 13 and 15 of the said Act and further without considering the decree in question as nullity for want of inherent jurisdiction. Such a decree being nullity, objection may be indeed raised in execution proceedings. Reliance has been placed on Ratnakar Tanbaji hankar, AIR 1994 Bom. 132, which deals with a claim arising out of an accident which was not found to have fallen within the ambit of Section 13 (1) of the Railway Claims Tribunal Act, 1987. Present case being distinguishable on facts, plaintiff/respondent does not get any assistance from it.

In the result, it is observed that the plaintiff/respondent had instituted a suit for refund of freight money after making appropriation/adjustment of the interest unilaterally and the Civil Court had no jurisdiction to entertain such a claim in view of Section 13 (1)(b) read with Section 15 of the Railway Claims Tribunal Act, 1987. This being so, the decree in question was void. The same being nullity cannot be executed against the revisionist. Consequently, the objection u/s 47, CPC raised by the revisionist is accepted and, thus, the Civil Revision stands allowed. Impugned order is hereby set aside. Execution proceedings are accordingly quashed.

No order as to costs.