
(2001) 02 BOM CK 0044
In the Bombay High Court
Case No : Writ Petition No. 3137 of 1993

Union of India

APPELLANT

Vs

M/s. Laxmi Vishnu Textile Mills Ltd. and Others

RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Railway Claims Tribunal Act, 1987 — Section 13, 15
Railways Act, 1989 — Section 124A, 82A

Citation : (2002) 1 ACC 171 : (2001) 2 ACC 1 : (2002) ACJ 171 : (2001) 2 ALLMR 587 : (2001) 3 BomCR 35 : (2001) 2 BOMLR 350 : (2001) 2 MhLj 381

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Mr. Navin Parekh, for the Appellant; Mr. V.G. Madbhavi and Ms. S.V. Madbhavi, for the Respondent

Judgement

A. M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution takes exception to the order passed by the Joint Civil Judge, S. D., Solapur dated 3.11.1992 in Special Civil Suit No. 172 of 1991.

2. By the impugned order the Court below has pronounced upon the issue of jurisdiction of the Civil Court to entertain the suit, as filed, notwithstanding the express bar contained in section 15 of the Railway Claims Tribunal Act, 1987.

3. Briefly stated the respondent No. 1-plaintiff instituted a suit against the petitioner/defendant No. 1 and respondent Nos. 2 and 3-defendant Nos. 2 and 3 before the Court of Joint Civil Judge, S. D. Solapur being Spl. Civ. Suit No. 172 of 1991 after coming into force of the Railway Claims Tribunal Act, 1987.

4. Before examining the rival contentions it would be appropriate to advert to the relevant provision of the said Act which reads thus :

"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 administrations as carriers under Chapter VII of 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 82(A) of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of 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.

(1A) The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124A of the Railways Act. 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 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-section (1) and (1A) of section 13."

5. On plain reading of sections 15 of the Act it would appear that no Court shall have jurisdiction to entertain any proceedings relating to the responsibility of the railway administration as carriers under Chapter VII of Railways Act in respect of claim for compensation for loss, damage, deterioration or non-delivery of goods entrusted to a railway administration for carriage by railways compensation payable u/s. 82(A) of the Railways Act or the Rules made thereunder: and in respect of claims for refund or part thereof or for refund of any freight paid in respect of goods entrusted to railway administration to be carried by Railway. On the other hand such proceedings are amenable to the Claims Tribunal constituted under the Act of 1987, which will have exclusive jurisdiction to adjudicate the said claim. Section 15 of the Act postulates an express bar of jurisdiction against the Civil Court to adjudicate the issues that can be exclusively tried and decided by the Claims Tribunal under the Act of 1987. There can be no doubt that if the dispute or suit, as presented, would indicate that it is essentially a claim against the Railways and involve issues that could be exclusively tried by the Claims Tribunal under the Act of 1987 than such suit would be barred by virtue of

provisions u/s. 15 of the Act. In that case no Civil Court will have jurisdiction to adjudicate the said suit.

6. In the present case the lower Court proceeded on the assumption that the suit has been filed not only against the Railways but also against defendant Nos. 2 and 3, who are respondent Nos. 2 and 3 in the present petition. It is on that assumption that the Court proceeded to record that since the suit is filed against persons other than railway and relief has been prayed also against those persons, the Claims Tribunal under the Act of 1987 will have no exclusive jurisdiction to try and adjudicate the said suit. In the first place the language of the aforesaid provisions do not countenance such interpretation. In any case, such assumption is wholly misplaced and clearly overlooks the substance of the pleadings in the suit instituted by the respondent No. 1. No doubt the respondent No. 1 has prayed for relief against all the defendants to pay jointly and/ or severally and in the alternative to the respondent No. 1 the suit claim of Rs. 1.15.000/- and future interest. But on close examination of the averments in the plaint it would be seen that the said relief is a camouflage to defeat the exclusive jurisdiction of the Claims Tribunal which has been constituted under the Act, 1987. On examination of the averments in the plaint it will be seen that allegations have been made against the Railways; for having failed to deliver the goods; for being indifferent; for having adopted unreasonable attitude: for having diverted the goods etc. entrusted to railway administration for carriage by railways. On close scrutiny of the pleadings it would be seen that the gravamen of the allegations is against the Railways and defendant Nos. 2 and 3 have been impleaded only to create a camouflage so as to defeat the jurisdiction of the Claims Tribunal under the Act. Even assuming that a part of the suit claim is referable to Defendant Nos. 2 and 3 and that they are not amenable to the jurisdiction of the Claims Tribunal in that case a substantive suit could be maintained against the said Defendants alone. However, the mandate of section 15 of the Act cannot be allowed to be whittled down by permitting the plaintiff to join the causes against the said Defendants as well as the Railways especially when the point in issue to be decided against Railways could be exclusively decided by the Claims Tribunal. It cannot be disputed that on going through the pleadings the inevitable conclusion is that the allegations against the Railways which are the basis for the final relief, are in relation to issues that could be exclusively tried by the Railways Claim Tribunal. This crucial aspect of the matter has been clearly overlooked by the lower Court while considering the issue of jurisdiction. It is therefore not possible to uphold the view of the Trial Court and instead I would prefer to answer the issue against respondent No. 1-plaintiff.

7. For the aforesaid reasons this petition succeeds. Rule is made absolute in the above terms. No order as to costs.