
(2009) 02 BOM CK 0072

In the Bombay High Court

Case No : Letters Patent Appeal No. 328 of 2008 in Writ Petition No. 3849 of 2008

Vijay K. Mehta and Dr. Amritlal C. Shah

APPELLANT

Vs

Charu K. Mehta and Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 1, 18, 4
Bombay High Court (Original Side) Rules, 1980 — Rule 636
Constitution of India, 1950 — Article 226, 227
Government of India Act, 1915 — Section 107

Citation : (2009) 3 BomCR 179

Hon'ble Judges : Bilal Nazki, J;A.R. Joshi, J

Bench : Division Bench

Advocate : Iqbal Chagla, Sanjay Jain and Kunal Vajani, instructed by Wadia Ghandy and Co, for the Appellant; Aspi Chinoy and Raj Patel, Hetal Thakore, Razvi Nazir, instructed by Thakore Jariwala and Associates for Respondent No. 1 in LPA 328/2008, Mahesh Jethmalani and Nazir Razvi, instructed by Thakore Jariwala and Associates for Respondent No. 1 in LPA 330/2008, Hari Aney Pratik Sakseria and Jyoti Shah, instructed by D. Darashah and Co. for Respondent No. 2 in both LPAs, Subhash Zha, instructed by Dinesh Tiwari and Sneha for Respondent No. 3 in both the LPAs, Pranav Badhekar and Shane Sapeco, instructed by Hariani and Co. for Respondent Nos. 9 to 11 in both the LPAs and Jay Kansara, instructed by Paras Kuhad and Associates for Respondent Nos. 12 to 14 in both the LPAs., for the Respondent

Judgement

Bilal Nazki, J.—When both these matters were taken up, the learned Senior Counsel appearing for the respondents raised a preliminary objection about the maintainability of the appeals and, therefore, prayed that the preliminary objections be decided without going into the merits of the appeals. Therefore, the matters were heard only on preliminary objection.

2. The Joint Charity Commissioner's order dated 23rd July, 2008 has been challenged in the writ petitions. These petitions came to be heard by the learned

Single Judge of this Court and the learned Single Judge allowed the petitions partly. The learned Single Judge did not quash the order of the Charity Commissioner but directed that the first paragraph of the impugned decision would read as:

Respondent Nos. 1 to 9, the trustees shall not take any policy decision and shall not enter into any financial transaction with regard to the trust without prior approval of the CC till further orders.

3. The objection taken to the maintainability of these appeals is that since the writ petitions were filed under Article 227 of the Constitution of India, no appeal in terms of Letters Patent would lie to a Division Bench of this Court. The position of law that no appeal would lie against the judgment of a Court under Article 227 of the Constitution of India to the Division Bench of the High Court has been conceded by the learned Senior Advocate Mr. Chagla, appearing on behalf of the appellants. But he contends that the petitions were filed under Article 226 read with Article 227 of the Constitution of India. He has drawn our attentions to the writ petitions, which are styled as the writ petitions under Articles 226 and 227 of the Constitution of India. The main relief claimed in writ petition No. 3849 of 2008 was:

(a) That this Hon"ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or a direction calling for the records and proceedings of Charity Application No. 17 of 2006 pending on the files of Respondent No. 17 and after going through the legality and validity of the impugned Order dated June 3, 2008 being Exhibit "A" to the Petition be pleased to set aside and quash the same to the extent stated in paragraph No. 4 of the Petition.

The main relief claimed in writ petition No. 5732 of 2008 was:

(a) That this Hon"ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or a Direction in exercise of its powers under Articles 226 and 227 of the Constitution of India calling for the records and proceedings of Charity Application No. 17 of 2006 pending on the files of Respondent No. 17 and after going through the legality and validity of the impugned Order dated July 23, 2008 being Exhibit "H" to the Petition be pleased to set aside and quash the same.

4. When the writ petitions came to be heard by the learned Single Judge of this Court, an objection came to be raised about the maintainability of the writ petitions before the learned Single Judge. The Respondents therein contended that the matters have arisen wholly within the Greater Mumbai area, the Trust has its office in Mumbai, proceedings under the Act were pending before the Charity Commissioner at Mumbai and the order of the Charity Commissioner had been passed at Mumbai. It was contended that the matters arising substantially within the area of Greater Mumbai and therefore no writ petition under Article 226 of the Constitution of India can be entertained on the Appellate Side of the

Bombay High Court. It was contended that in terms of Rule 636 of the Bombay High Court (Original Side) Rules read with Rules 1 and 4 and Rule 18 of Chapter 17 of the Bombay High Court (Appellate Side) Rules, 1960, the Appellate Side should not have entertained the writ petitions. The learned Single Judge considered these rules and then was of the view that the grounds which were pressed into service by the petitioners can be effectively and conveniently addressed in exercise of powers under Article 227 of the Constitution of India. The learned Single Judge was also of the view that neither the Original Side nor the Appellate Side High Court Rules expressly bar institution of a composite writ petition under Article 226 read with 227 of the Constitution of India. He was of the view that Rule 18 of Chapter 17 of the Appellate Side Rules clearly encompasses a composite petition under Articles 226 read with 227 of the Constitution of India. But the Court was of the view that in view of the nature of relief that it proposed to grant, would be possible only in exercise of powers under Article 227 of the Constitution of India. Therefore, it is contended by the learned Counsel for the respondents that since the relief granted by the learned Single Judge was under Article 227 of the Constitution of India, the Letters Patent Appeal was not maintainable.

5. We do not think that it is necessary for us to go into the question which has been raised by the learned Counsel appearing for the respondents because it is conceded by the learned Counsel for the appellants that if it was a matter only under Article 227 of the Constitution of India then the Letters Patent Appeal would not lie. The learned Counsel for the respondents has relied on the Judgment of the Supreme Court in the case of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , in which the Supreme Court has gone into analysing the Rules of the Bombay High Court and while analysing these rules has come to the conclusion that no appeal would lie against an order passed under Article 227 of the Constitution of India. Justice Chinnappa Reddy concurring with Justice Madon, in a brief note said as under:

Unfamiliar as I am with the history, tradition and the lore of the city and the High Court of Bombay, I content myself by agreeing with the conclusion of my learned brother that no appeal under Clause 15 of the Letters Patent lies to the High Court against the order of a Single Judge of the High Court exercising jurisdiction under Article 227 of the Constitution, no less and no more. I do not have any doubt that the reference to Section 107 of the Government of India Act, 1915 in Clause 15 of the Letters Patent must necessarily be read as a reference to Article 227 of the Constitution. So read an appeal under Clause 15 is clearly not maintainable against an order made in exercise of the power under Article 227. This is the view taken by all the High Courts in India except the High Court of Bombay, where alone opinion has not been unanimous.

Learned Counsel also relied upon another judgment of the Supreme Court in the case of M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad, , wherein the Supreme Court held, "Whether in substance the petition was under Article 226 or

under Article 227 of the Constitution of India, if the Single Judge exercised jurisdiction under Article 226 of the Constitution of India the Letters Patent Appeal would be maintainable but if jurisdiction is exercised under Article 227 of the Constitution of India, it would not be maintainable. This was a case in which basically an order of quasi judicial authority was under challenge, which is the case in the present case. The Supreme Court framed certain points to be answered and the first point was "Whether the respondent's letters patent appeal was maintainable." In paragraph 14 the Supreme Court noted the facts, which reads as under:

So far as the question of maintainability of the letters patent appeal is concerned, it has to be noted that the revisional order was passed by the Labour Court on the respondent's complaint u/s 28 of the Maharashtra Act. The said order was confirmed by the Industrial Tribunal u/s 44 of the same Act. Both the Courts held that retrenchment of the respondent does not amount of any "unfair labour practice" on the part of the appellant. These orders were challenged by the respondent by filing writ petition under Articles 226 and 227 of the Constitution of India before the High Court of Judicature at Bombay, Nagpur Bench. The learned Single Judge dismissed the said writ petition, but his order itself shows that he was considering the writ petition of the respondent which was moved before him invoking the High Court's jurisdiction under Articles 226 and 227 of the Constitution of India. In the said writ petition under Articles 226 and 227 of the Constitution, the respondent requested the High Court to call for the record and proceedings of Revision Petition No. 70 of 1990 and after perusal thereof to be further pleased to quash and set aside the order dated 30/11/1990 passed by the Second Labour Court, Nagpur in Complaint No. 262 of 1982 and order dated 20/11/1990 passed in revision by the Industrial Court.

Then in paragraph 16, the Supreme Court held as under:

16. It is, therefore, obvious that the writ petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for the High Court's interference seeking issuance of an appropriate writ of certiorari under Article 226 of the Constitution of India. Basic averments for invoking such a jurisdiction were already pleaded in the writ petition for the High Court's consideration. It is true, as submitted by the learned Counsel for the appellant, that the order of the learned Single Judge nowhere stated that the Court was considering the writ petition under Article 226 of the Constitution of India. It is equally true that the learned single Judge dismissed the writ petition by observing that the courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge was not inclined to interfere under Article 227 of the Constitution of India only. The said observation equally supports the conclusion that the learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier, he was considering the aforesaid writ petition moved under Article 226 as well as Article 227 of the Constitution of

India. Under these circumstances, it is not possible to agree with the contention of the learned Counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the writ petition of the respondent.

The Supreme Court also quoted a portion (paragraph 107) from the judgment, which we have already referred to herein above, namely, in the case of *Umaji Keshao Meshram* (supra) which reads thus:

107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh v. Karan Singh* and by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dass and Barham Dutt v. Peoples' coop. Transport Society Ltd.* And we are in agreement with it.

After quoting the above portion, the Supreme Court went on to hold as under:

The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such a jurisdiction was invoked and when his writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Articles 226 (sic 227) of the Constitution of India. This conclusion directly flows from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that Clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of the learned Single Judge. It is also necessary to note that the appellant being the respondent in letters patent appeal joined issues on merits and did not take up the contention that the letters patent appeal was not maintainable. For all these reasons, therefore, the prima objection to the maintainability of the letters patent appeal as canvassed by learned Counsel for the appellant, has to be repelled. Point 1 is, therefore, answered in the

affirmative against the appellant and in favour of the respondent." 6. Learned Counsel for the appellants submits that the reliefs claimed were under Articles 226 and 227 of the Constitution of India. If the learned Judge had not granted the relief under Article 226 of the Constitution that would not disentitle the petitioner from filing an appeal against the order because he is also aggrieved that his reliefs claimed under Article 226 of the Constitution were not granted. Learned Counsel for the appellants has also relied on the judgment in the case of *Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others*, . In paragraph 6, the Supreme Court held as under:

6. So far as the law on the matter is concerned, as to whether an appeal would lie against an order made in writ petition before the High Court challenging an order of the Labour Court, this Court in its decision in *Lokmat Newspapers (P) Ltd. v. Shankarprasad* stated that if a Single Judge exercises jurisdiction under Article 226, letters patent appeal would be maintainable, but if the jurisdiction is exercised under Article 227 it will not be maintainable. But with an explanation that if the Single Judge of the High Court in considering the petition under Article 226 or Article 227 does not state under which provision he has decided the matter and where the facts justify filing of petition both under Article 226 and 227 and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal.

7. For the reasons aforesaid, we hold that the appeals are maintainable.

8. Let both the appeals come up for hearing on merits along with the civil applications filed therein on 23rd March, 2009.