Ex. Const. Krishan Kumar Vs. Union of India and Others

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Court : Delhi

Decided On : Sep-01-2016

Judge : Valmiki J. Mehta

Appeal No. : RSA No. 254 of 2014

Appellant : Ex. Const. Krishan Kumar

Respondent : Union of India and Others

Judgement :

Valmiki J. Mehta, J. (Oral)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the Judgment of the First Appellant Court dated 10.5.2014 by which the first appellate court allowed the first appeal filed under Section 96 CPC by the respondents herein against the Judgment of the Trial Court dated 8.5.2012. The First Appellate Court by its Judgment dated 10.5.2014 has set aside the Judgment of the Trial Court dated 8.5.2012 which had decreed the suit filed by the appellant/plaintiff questioning his dismissal from services on the basis of the orders passed by the Disciplinary Authority, Appellate Authority and the Revisional Authority. The effect of the impugned judgment of the first appellate court is that the suit filed by the appellant/plaintiff, and which was decreed by the trial court by the Judgment dated 8.5.2012, was dismissed. The first appellate court dismissed the suit by holding that the Order of the Disciplinary Authority dated 20.12.1996

challenged by the appellant/plaintiff in the suit was not a proper legal challenge because the Order of the Disciplinary Authority dated 20.12.1996 had merged into the Orders passed by the Appellate Authority dated 25.9.1997 and the Revisional Authority dated 20.4.1999, and finally the Order of the Central Government dated 30.2.2003 (this is a non-existent order as stated hereinafter) and since the suit only challenged the Order of the Disciplinary Authority dated 20.12.1996 and not the orders of the higher authorities in which the order of the Disciplinary Authority merged, therefore, the suit was mis-conceived and liable to be dismissed for failing to challenge the Orders of the Appellate Authority dated 25.9.1997, Revisional Authority dated 20.4.1999 and the suo moto Order of the Central Government dated 30.2.2003.

2. There are two main issues to be decided with respect to the present second appeal. First is whether the suit filed by the appellant/plaintiff challenging the Orders passed by the Departmental Authorities filed on 15.7.2003 is or is not within limitation. Related with this first issue, and which aspect has transpired during the course of hearing of this second appeal is that even if the limitation for filing of the suit is to be taken from the Order of the Central Government dated 30.2.2003, whether the suit is not maintainable and is filed within limitation because there does not at all exist any Order of the Central Government dated 30.2.2003. The second issue to be examined is whether the suit itself was not maintainable being barred by res judicata on account of the orders of the departmental authorities which were statutory authorities, could only have been challenged by means of filing of proper petition under Articles 226 and/or 227 of the Constitution of India, and which was not done.

3. At the outset, let me reproduce Sections 8 and 9 of the Central Industrial Security Force Act, 1968 (hereinafter referred to as the CISF Act),and which provisions provides for the orders to be passed by the Disciplinary Authority, Appellate Authority, Revisional Authority and the Central Government, and which provisions read as under:-

8. Dismissal, removal etc.of enrolled members of the Force:- Subject to the provisions of article 311 of the Constitution and to such rules as the Central

Government may make under this Act supervisory officer may

(i) dismiss, remove, order of compulsory retirement or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely

(a) fine to any amount not exceeding seven days pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty.

(c) removal from any office of distinction or deprivation of any special emolument.

(d) withholding of increment of pay with or without cumulative effect.

(e) withholding of promotion.

(f) Censure.

9. Appeal and revision:- (1) Any "enrolled" member of the Force aggrieved by an order made under section 8 may within thirty days from the date on which the order is communicated to him prefer an appeal against the order to such authority as may be prescribed, and subject to the provisions of sub section (2A), sub section (2B) and subsection (3), the decision of the said authority thereon shall be final:

Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

2) In disposing of an appeal the prescribed authority shall follow such procedure as may be prescribed.

(2A) Any enrolled members of the Force aggrieved by an order passed in appeal under sub-section (1) may, within a period of six months from the date on which

the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.

(2B) The authority, as may be prescribed for the purpose of this sub-section, on a revision petition preferred by an aggrieved enrolled member of the Force or suo-moto, may call for, within a prescribed period, the records of any proceeding under section 8 of sub-section(2) or sub-section (2A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit."

(3) The Central Government may call for an examine the record of any proceeding under section 8 or under sub-section (2), sub section (2A) or sub section (2B) of this section and may make such inquiry or cause such inquiry to be made and subject to the provisions of this Act, may pass such order thereon as it thinks fit;

Provided that no order imposing an enhanced penalty under sub-section (2) or sub-section (3) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.

4. A reading of the aforesaid provisions shows that the orders passed by the departmental authorities in the present case, whether by the Disciplinary Authority (under Section 8 of the CISF Act) or the Appellate Authority (under Section 9 sub-Section 1 of the CISF Act) or the Revisional Authority (under Section 9 sub-Sections 2A and 2B of the CISF Act) or the order of the Central Government (under Section 9 sub-Section 3 of the CISF Act), are statutory orders, i.e, these orders are passed not because of any internal service rules of an organization but of the authorities exercising powers under statutory provisions. Once statutory authorities exercise their powers, such orders passed by the statutory authorities achieve finality unless they are appropriately challenged. Putting it in other words, an order of the Revisional Authority under subSections 2A and 2B of Section 9 or of the Central Government under subSection 3 of Section 9 of the CISF Act can only be challenged by a challenge to a higher court/forum and which would be proceedings under Articles 226 and/or 227 of the Constitution of India. Assuming that there exists an Order of the Central Government dated 30.2.2003, and even

assuming that it does not because there does exist the Order of the Revisional Authority dated 20.4.1999, these orders being passed under statutory provisions would achieve finality unless and until such orders are questioned before this Court, or an appropriate High Court, under Articles 226 and/or 227 of the Constitution of India. If that is not done, orders of the statutory authorities passed under Sections 8 and 9 of the CISF Act will achieve finality and will operate as res judicata for any suit which may be filed challenging the orders of the statutory authorities. The principles of res judicata are not confined or derive their entire existence only from Section 11 CPC. The doctrine of res judicata is of general application and is based on public policy that litigation must achieve finality and individuals should not be vexed twice for the same kind of litigation. Section 11 CPC is only one pointer to the existence of the doctrine of res judicata, but doctrine of res judicata is one of general application not restricted to decision passed by civil courts only. This has been so held by the Supreme Court in the judgment in the case of Gulam Abbas and Others Vs. State of Uttar Pradesh and Others (1982) 1 SCC 71. Paragraph 14 of this judgment is relevant and the same is reproduced hereinunder:-

14. Counsel for respondents 5 and 6 next contended that the decision in this litigation (Suit No. 232 of 1934) would not operate res judicata against them or the Sunni community of Mohalla Doshipura inasmuch as Munsif's Court at Banaras did not have either pecuniary or subject-wise jurisdiction to grant the reliefs claimed in the instant writ petition; in other words that Court was not competent to decide the present subject-matter and such the bar of res judicata under Section 11 of the Civil Procedure Code, 1908 was not attracted, and it would be open to the respondents 5 and 6 and the members of the Sunni community to agitate question of title either to the plots or to the structures thereon or even the Shias' entitlement to their customary rights over them. In support of this contention counsel relied on two decisions namely, Rajah Run Bahadoor Singh v. Lachoo Koer and Gulab Bai v. Manphool Bai. It is not possible to accept this contention for the reasons which we shall presently indicate. It is well settled that Section 11 of the CPC is not exhaustive of the general doctrine of res judicata and though the rule of res judicata as enacted in Section 11 has some technical aspects the general doctrine is founded on considerations of high public policy to achieve two

objectives, namely, that there must be a finality to litigation and that individuals should not be harassed twice over with the same kind of litigation. In Daryao v. State of U. P. this Court at SCR p. 582 has observed thus:

Now the rule of res judicata as indicated in Section 11 of the CPC has no doubt some technical aspects, for instance, the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that finality should attach to the binding decisions pronounced by Courts of competent Jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

Reference in this connection was made by the Court to the famous decision in the leading Duchess of Kingston Case, Halsbury's Laws of England and Corpus Juris. In Gulab Chand Chhotalal Parikh v. State of Bombay (now Gujarat) the question was whether after the dismissal of a writ petition on merits after full contest by the High Court under Article 226 of the Constitution a subsequent suit raising the same plea claiming discharge from the liability on the same ground was entertainable or not and this Court held that on general principles of res judicata the decision of the High Court on the writ petition operated as res judicata barring the subsequent suit between the same parties with respect to the same matter. On a review of entire case law on the subject, including Privy Council decisions, this Court at SCR p.574 observed thus:

As a result of the above discussion, we are of opinion that the provisions of Section 11, CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subjectmatter. The nature of the former proceeding is immaterial.

We do not see any good reason to preclude such decisions on matters in controversy in writ proceeding under Article 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. (emphasis supplied)

The above observations were approved by this Court in a subsequent decision in the case of Union of India v. Nanak Singh. It is thus clear that technical aspects of Section 11 of CPC, as for instance, pecuniary or subject-wise competence of the earlier forum to adjudicate the subject-matter or grant reliefs sought in the subsequent litigation would be immaterial when the general doctrine of res judicata is to be invoked. The two decisions relied upon by counsel for the respondents 5 and 6 were directly under Section 11of CPC. Even under Section 11 the position has been clarified by inserting a new Explanation VIII in 1976. It was not disputed that the Munsiff's Court at Banaras was competent to decide the issues that arose for determination before it in earlier litigation and, therefore, the decision of such competent Court on the concerned issues must operate as a bar to any subsequent agitation of the same issues between the same parties on general principles of res judicata. The contention raised by counsel for respondents 5 and 6 in this behalf, therefore, has to be rejected. It was then faintly urged by counsel for respondents 5 and 6 that the dismissal of plaintiffs' suit (No. 232 of 1934) would not confer any rights on the Shia community who were party defendants to the suit. The contention is merely required to be stated to be rejected. Not only were the Sunnis' customary rights (specified in para 4 of the plaint) over the plots and structures in question put in issue during the trial but the customary rights to perform their religious ceremonies and functions on the plots and structures thereon claimed by the Shias were also directly and substantially put in issue inasmuch as the plaintiffs (Sunni Muslims) had sought an injunction restraining the Shias from exercising their customary rights. therefore, the decision in this litigation which bore a representative character not merely negatived the Sunnis' customary rights claimed by them over the plots and structures but adjudicated, determined and declared the Shias entitlement to their customary rights to perform their religious ceremonies and functions on the plots and structures thereon in question and this decision is binding on both the communities of Mohalla

Doshipura. There is no question of there being any gap or inadequacy of the material on record in the matter of proof of Shias' entitlement to customary rights over the plots and structures in question, whatever be the position as regards their title to the plots or structures. We have already indicated that this decision even upholds their title to two main structures, Zanana Imambara and Mardana Imambara (Baradari). In our view, therefore, this is a clear case of an existing or established entitlement to the customary rights in favour of the Shias' community to perform their religious ceremonies and functions over the plots and structures in question under the decree of competent civil Court for the enforcement of which the instant Writ Petition has been filed. (emphasis is mine)

5. A reading of the aforesaid paragraph 14 of the judgment in the case of Gulam Abbas (supra) leaves no manner of doubt that principles of res judicata are of general application and are not confined only to proceedings of suits and applications under Section 11 CPC.

6. Since the undisputed position which emerges on record is that the appellant/plaintiff did not file any writ petition in this Court under Articles 226 and/or 227 of the Constitution of India challenging the orders of the statutory authorities being the Revisional Authority Order dated 20.4.1999, and assumed/imaginary Order of the Central Government dated 30.2.2003, the present suit filed by the appellant/plaintiff, would in fact be barred by application of the general principles of res judicata. I may note that though this aspect was not argued before the courts below but, since this is a purely legal issue arising on admitted facts, I have taken this into consideration for decision in view of the recent judgement of the Supreme Court in the case of Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782 and in which judgment the Supreme Court says that once the record of the trial court is complete, the appellate courts should not remand matters but should decide the cases themselves on the basis of record. Remand is to be resorted to only if the suit is decided on a preliminary issue or if additional evidence has to be led before the trial court. The relevant paras of the judgment in the case of Lisamma Antony (supra) are reproduced herein under:-

14. Rule 23 of Order 41 of Code of Civil Procedure, 1908, (for short "the Code") provides that where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject all just exceptions, be evidence during the trial after remand.

15. Rule 23A of Order 41 of the Code provides that where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.

16. Rule 24 of Order 41 of the Code further provides that where evidence on record is sufficient, appellate court may determine case finally, instead of remanding the same to the lower court.

17. Needless to say, in the present case, the suit was not disposed of on any preliminary issue by the trial court. The second appellate court should have restrained itself from remanding a case to the trial court. Remanding a case for re-appreciation of evidence and fresh decision in the matter like the present one is nothing but harassment of the litigant. The unnecessary delay in final disposal of a lis, shakes the faith of litigants in the court.

7. I therefore hold that the subject suit filed by the appellant/plaintiff is barred by the doctrine of res judicata. For the completion of narration, I must note that the only other method of challenging the final judgment, either by statutory authority or a civil court, would be by alleging fraud as per Section 44 of the Indian Evidence Act, 1872, and admittedly, there is no cause of action laid out in the present plaint with respect to the suit plaint being found on the cause of action of fraud as per Section 44 of the Indian Evidence Act.

8(i) The next issue which is required for examination is as to whether the subject suit is barred by limitation and for which purpose it is assumed that the suit could have been filed assuming that the doctrine of res judicata will not prevent the filing of the suit by the appellant/plaintiff (and which aspect has already been decided against the appellant/plaintiff in terms of the aforesaid discussion). In this regard a very curious aspect has emerged in the case because whereas in the suit the appellant/plaintiff had sought declaration and mandatory injunction for questioning only the Order of the Disciplinary Authority dated 20.12.1996, and not the orders of the Appellate Authority, Revisional Authority and the Central Government s suo moto powers to call for records and passing the Order dated 30.2.2003, the suit has been held to be filed within limitation of three years as it was held as filed within three years of the Order of the Central Government dated 30.2.2003, but, the scanning of the record of the trial court shows that there exists no such Order in the trial court record of the Central Government dated 30.2.2003. I have shown the entire trial court record to the counsel for the appellant/plaintiff to enable him to point out to this Court from this record that where is this Order which is said to be the order of the Central Government dated 30.2.2003, however, after going through the record, the counsel for the appellant/plaintiff could not point out the existence of any such Order of the Central Government dated 30.2.2003 in exercise of powers under Section 9 sub-Section 3 of the CISF Act.

(ii) At this stage, it also may be stated that it is curious that the Order could not be dated 30.2.2003, because, the month of February at best would have 29 days, and therefore there could never be an Order dated 30.2.2003. In any case, assuming that there is a typing mistake or any other clerical mistake and the Order is of a date of 28.2.2003 or an earlier date of February, 2003, such an order had to see the light of the day before the courts below could have held the suit filed on 15.7.2003 to be within limitation because it challenged the order of the Central Government of February, 2003.

(iii) This issue for discussion I am stating as a matter of theoretical submission because as stated above, in the suit only the Order of the Disciplinary Authority dated 20.12.1996 was challenged and there was no challenge in the suit to the Orders passed by the Appellate Authority dated 25.9.1997, the Revisional

Authority dated 20.4.1999 and the assumed Order of the Central Government dated 30.2.2003.

9. Therefore, once there exists no Order of the Central Government dated 30.2.2003 which could therefore be challenged, it was only the Order of the Revisional Authority dated 20.4.1999 which could be challenged in the suit. Assuming that the suit could have been filed in spite of being barred by res judicata, the same could have been filed only on or before 20.4.2002, i.e three years from the Order of the Revisional Authority dated 20.4.1999 but the suit was only filed much later on 15.7.2003, and therefore, the suit was clearly barred by limitation as cause of action to challenge by the suit the order of the Revisional Authority dated 20.4.1999 could only have been filed till 20.4.2002.

10. To complete the narration in this regard again it is required to be stated that since the appellant/plaintiff had only challenged the Order of the Disciplinary Authority under Section 8 of the CISF Act dated 20.12.1996, the first appellate court has rightly dismissed the suit by giving detailed observations that since the Order of the Disciplinary Authority dated 20.12.1996 merged into the Order of the Revisional Authority dated 20.4.1999 and the assumed Order of the Central Government dated 30.2.2003, the suit was not maintainable on account of the doctrine of merger and the orders being the orders of statutory authorities under the CISF Act.

11. The result of the aforesaid discussion is that taking the suit is filed for challenging the Order of the Revisional Authority dated 20.4.1999, (although the suit only challenged the Order of the Disciplinary Authority dated 20.12.1996), yet, the suit would be barred by limitation because challenge to the Order of the Revisional Authority dated 20.4.1999 could only have been by filing of the suit till 20.4.2002, but the suit was filed only subsequently on 15.7.2003. As already stated above there is no Order of the Central Government dated 30.2.2003 and hence there does not arise any issue of commencement of limitation from this date of non-existent Order of the Central Government dated 30.2.2003 passed under Section 9(3) of the CISF Act.

12. Accordingly, it is held that the suit has been rightly dismissed by the impugned judgment of the first appellate court as the suit only challenged the Order of the Disciplinary Authority dated 20.4.1999 but did not challenge orders of the higher authorities and in which the order of the Disciplinary Authority merged namely the Orders of the Appellate Authority dated 25.9.1997 and the Revisional Authority dated 20.4.1999. The suit is also barred by application of the general principles of res judicata and the ratio of the judgment of the Supreme Court in the case of Gulam Abbas (supra). The suit is also barred by limitation because there is no Order of the Central Government dated 30.2.2003 passed under Section 9(3) of the CISF Act and the highest order of the statutory authority in this case was the Order of the Revisional Authority dated 20.4.1999 and which could not be challenged by filing a suit (assuming the suit to be filed in spite of the doctrine of res judicata) and the suit if filed was/could be filed the same could only be before 20.4.2002 but the present suit was filed on 15.7.2003 after expiry of the period of limitation.

13. In view of the above there is no merit in this second appeal and no substantial question of law arises for this second appeal to be entertained. The Regular Second Appeal is accordingly dismissed.