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Court : Mumbai

Decided On : Oct-10-1995

Reported in : 1996ACJ566

Judge : V.S. Sirpurkar, J.

Appeal No. : F.A. Stamp Nos. 20421, 20441, 20536, 20592, 20594 and 21364 of 1995

Appellant : Devidas

Respondent : Chandrakala and ors.

Advocate for Pet/Ap. : A.V. Mohta, Adv.

Judgement :

V.S. Sirpurkar, J.

1. By these counsel notes, the appellants take an exception to the order passed by the Additional Registrar (Judicial) of this court, dated 15.9.1995.

These are the appeals under Section 173 of the Motor Vehicles Act, challenging the award passed by the Motor Accidents Claims Tribunal, wherein a monetary liability is fastened against the appellants by way of damages. Section 173 of the Motor Vehicles Act deals with a provision of filing an appeal. A proviso to Sub-section (1) of Section 173 is as under:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court, unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less in the manner directed by the High Court.

2. When the present appeals were filed, admittedly no such amount was paid along with the appeals. In this behalf the High Court Appellate Side Rules, Chapter IV, Rule 12-A, provides that an appeal memo under the Motor Vehicles Act, 1988, filed under Section 173 of the said Act shall be accompanied by a certificate by the Registrar of the High Court that a sum of Rs. 25,000/- or 50 per cent, whichever is less, of the amount awarded by the award appealed from, has been deposited by the appellant in the High Court. The appeal which is not accompanied by such a certificate shall be placed before the Registrar for orders. In accordance with this rule, after the appeals were filed, they were placed before the Registrar, who has passed the order directing the payment to be made of the aforementioned amount within two weeks from the date of the passing of the order, failing which he has directed to refuse the registration.

3. Mr. Mohta, learned counsel for the appellants, contends that this order is patently incorrect, inasmuch as the Registrar has failed to note the true implication of the term 'entertained'. According to Mr. Mohta, the result of this order is that on failure of the payment of the amount so directed by the Registrar within 15 days, the registration of the appeal itself shall stand refused and thereby the whole appeal would become purposeless. According to Mr. Mohta, the word 'entertained' signifies appreciation of the appeal on merits. He, therefore, submits that even if the amount is not so paid, the Registry could not have ordered the refusal of registration as he has done and he should have simply kept the appeals pending. According to him, the bar is only for the entertainment and not for the registration of the appeal. In support of his argument, Mr. Mohta relied on two Supreme Court decisions, viz., Lakshmiratan Engineering Works Ltd. v. Assistant Commissioner, Sales Tax, Kanpur Range, Kanpur : [1968]1SCR505 and Hindusthan Commercial Bank Ltd. v. Punnu Sahu : AIR 1970 SC1384 , wherein the Apex Court has interpreted the word 'entertain' to mean 'adjudicate upon' or 'proceed to consider on merits'. Mr. A.V. Mohta, therefore, urges that at the most, the Registrar could

have kept these appeals pending without they being forwarded to the court for being entertained on merits, in the absence of the payment of amount as directed by him, but he could not have directed the refusal of the registration.

4. The argument has to be rejected as not tenable. There can be no doubt as regards the law laid down by the Apex Court in the case of Lakshmiratan Engineering Works Ltd., : [1968]1SCR505 , as also in Hindusthan Commercial Bank Ltd., : AIR 1970 SC1384 . In both these cases the word 'entertain' has been taken to mean as 'to adjudicate upon' or 'to proceed to consider on merits'. The first mentioned case was in respect of an appeal under the U.P. Sales Tax Act and U.P. Sales Tax Rules, wherein a proviso to Section 9 regarding the filing of the appeals is almost identical. The concerned proviso therein was:

Provided that no appeal against an assessment shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax admitted by the appellant to be due, or of such instalments thereof as may have become payable.

Reading this proviso along with Rule 66 of the U.P. Sales Tax Rules, the Apex Court proceeded to hold that the outright rejection of the appeal on the ground of nonpayment of the amount mentioned in Section 24, without its entertainment, was not right. The Apex Court proceeded to hold that the bar was only as regards the 'entertainment' of the appeal and, therefore, the bar would operate only if the appeal were to be considered on merits. The Apex Court also further held that the rule required that the memorandum of appeal shall be accompanied by the challan showing the payment. The Apex Court also noted in that case that in fact the tax was already paid. However, the challan was not accompanied with the appeal. The Apex Court, therefore, proceeded to hold that though the rule laid down one uncontestable mode of proof of the payment of the tax which the court would always accept but it did not exclude the operation of the proviso when equally satisfactory proof was made available to the officer hearing the appeal and it was proved to his satisfaction that the payment of the tax had been duly made and in time. The Apex Court, in that sense, held the rule to be directory.

5. This law regarding the interpretation of the term 'entertain' was thereafter followed in terms in Hindusthan Commercial Bank Ltd.'s case, : AIR 1970 SC1384 . This was a case under Order 21, Rule 90 of the Code of Civil Procedure and more particularly proviso to Clause (b) thereof, which was introduced by the Allahabad High Court. By this proviso it was laid down that no application to set aside a sale could be entertained unless the applicant deposited such amount not exceeding twelve and half per cent of the sum realised by the sale or furnished such security as the court might, in its discretion, fix except when the court for reasons to be recorded dispense with the requirements of that clause. There again the applicant had not given the security as provided in the newly amended clause, nor did the court call upon him to do so, and the parties had proceeded before the executing court on the basis that the application was regularly made and it was only in the High Court that the objection regarding the maintainability of the application was taken, for the first time. The Apex Court followed the decision laid down in Lakshmiratan Engineering Works, : [1968]1SCR505 . However, the Apex Court held that Clause (b) to the proviso conferred on the court considerable discretion and it was left to the court to decide the quantum of deposit to be made subject to the maximum prescribed. It, therefore, proceeded to hold that the court had enough discretionary power. It also observed that the court would ordinarily give opportunity to the applicant to comply with Clause (b) and could reject the application if the same were still not complied with, and that should be particularly so in an application made before Clause (b) was incorporated.

6. The reliance by Mr. Mohta on these cases is clearly uncalled for. Though it is true that the word 'entertain' has been interpreted to mean 'to adjudicate upon' or 'to proceed to consider on merits', it does not mean that the Apex Court has left no discretion in the High Court to deal with such matters. The interpretation in these two cases is in keeping with the circumstances obtained in these cases, which would be clear from the case of Lalaram Hariram : 1970 CriLJ1014 , where the Supreme Court did not follow this interpretation of the same term and held that the term 'entertain' in Section 417 of the Criminal Procedure Code (1898) meant 'file or received by the court in the context of the matter.' The court further observed that the acceptance of interpretation in Lalaram's case would render many applications under Section 417 of the Criminal Procedure Code barred, if they were not put up

for healing before the court within 60 days of the order of acquittal. Therefore, it is clear that the interpretation of a particular term would essentially depend first upon the language of the provisions where that terms appears, the context in which such term appears as also the purpose for which it is made.

7. In fact, the language of Section 173 of the Motor Vehicles Act itself has left a complete discretion to the High Court. The language of the proviso suggests that it is imperative that the amount as contemplated in the proviso should be paid with the appeal. The words 'with it' signify the same. However, the manner of this payment has been left to the High Court which is significant from the words of the last part of the proviso, being 'in the manner directed by the High Court'.

7-A. Now, after this provision has come by way of an amendment, the Appellate Side Rules were considerably amended so as to include Rule 12-A in Chapter IV. Under that rule, the High Court has directed that while filing the appeal, it has to be accompanied with by the certificate certifying the payment of amount issued by the Registrar of the High Court. However, it has to be remembered that the rule does not throw the appeal at the threshold if it is not accompanied with such certificate, but it is allowed to be filed and then the said appeal is examined in terms of the provisions made in Chapter V which pertains to the procedure after presentation of the appeals regarding the removal of office objections. The rule merely provides that such an appeal would be kept before the Registrar who would be competent to pass such order as he would deem fit in the circumstances, including giving further time which is normally given for removal of office objections. It has to be remembered here that Section 173 of the Motor Vehicles Act spells out that the manner in which the payment is to be made would be as directed by the High Court. Therefore, there is nothing wrong if by Rule 12-A, it is provided that an appeal which is not accompanied with by a necessary certificate should be kept before the Registrar for orders. After all, the Registrar does not throw the appeal away, but he, by dint of the necessary powers conferred upon, decides to require the parties to comply with the necessary formalities for removing the defects in the appeal. In short, the non-accompaniment of the said certificate has been viewed as one of the objections regarding which the Registry could pass the necessary orders. Such powers lie with the Registrar, both under Chapter IV and Chapter V

of the Appellate Side Rules.

Under Rule 5, there is a specific power given to the Registrar to refuse all types of registrations if the party fails to remove the office objections within the prescribed time. Not only this, but under the proviso, the Registrar has a power also to condone the delay and order the registration. There is also a revision provided against the order passed by the Registrar refusing the registration and as such the Registrar is perfectly competent to deal with these kinds of appeals under the special Act and to pass the necessary orders. Therefore, there was nothing wrong if the Registrar after accepting the appeals directed the payment to be made within 15 days.

8. The contention of Mr. Mohta that the registration of the appeals cannot be refused at all and the appeals are to remain pending, and it would be left to the sweet discretion of the appellants to decide as to when they would make the payment as contemplated in the proviso, is obviously incorrect, as the language of the proviso itself, read with Rule 12-A, does not permit the same. In fact, the very purpose of the proviso in that case would be defeated, if the proviso is interpreted as suggested by Mr. Mohta. The party concerned would be in a position to stall the payment of Rs. 25,000/- or half the amount of the award, whichever is less, for a considerable time, thereby making it difficult for the respondents even to contest the appeals. After all, the optimum limit of this deposit is Rs. 25,000/-. The intendment of the proviso is obviously to see that a person filing an appeal does not get an opportunity to deprive the party who has suffered the accident of at least some amount, so that the party concerned gets a minimum relief and is even able to contest the appeal. That very purpose would be defeated, if it is ruled that once the appeal under Section 173 of the Motor Vehicles Act is filed, its registration cannot be refused on account of non-payment and the non-payment would merely result in the appeal remaining pending for indefinite time in the dockets of the High Court. After all, once the appeal is filed, it would be perfectly within the powers of the Registrar to deal with it in accordance with the Appellate Side Rules, and there is nothing in the language of Section 173 of the Motor Vehicles Act which brings any clouds on the right of the Registrar to deal with these appeals, particularly on account of the non-payment of the necessary

amounts by the appellants.

9. In that view of the matter, it will have to be held that the order passed by the Registrar is a correct order. The appellants shall now make the necessary payments. However, the time from filing of the notes till this order is made shall be ignored by the Registrar in the sense that the time granted by the Registrar shall stand extended by the days spent in getting these notes in all these six appeals adjudicated upon.

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