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Regional Controller Vs. Assistant Commissioner

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Court : Karnataka

Decided On : Nov-16-1989

Reported in : ILR1990KAR448

Judge : Murlidher Rao, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115 and 152

Appeal No. : C.R.P. No. 6631 of 1989

Appellant : Regional Controller

Respondent : Assistant Commissioner

Advocate for Def. : T.S. Mohammed Ali, HCGP for R-1 and ;D.S. Hosamath, Adv. for R-2

Advocate for Pet/Ap. : Ananth Mandagi, Adv.

Disposition : Revision petition dismissed

Judgement :
ORDER

Murlidher Rao, J.

1. The petitioner is the Regional Controller, National Airports Authority, Santa Cruz, Bombay. He challenges the order passed by the II Additional Civil Judge,

Belgaum, on 18th April 1987, in Misc. Case No. 16/1986. This Revision Petition is filed on 26th October 1989; along with the Revision Petition, the petitioner has filed an application under Section 5 of the Limitation Act and has also filed an application for staying the impugned order. There is a delay of 831 days.

2. Under the High Court Rules this revision could not be registered unless the delay is condoned. Mr. Anant Mandagi, learned Counsel for the petitioner submitted that the decree-holder has filed execution case No. 167/1987 seeking execution of the modified award and if stay is not granted, he will suffer irreparable injury. He submitted that there is urgency in the matter and an interim order should be issued without insisting on the notice being issued to the respondents, pending I.A.I - for condonation of delay; in view of the inordinate delay, such a request could not be acceded to.

3. Mr. D.S. Hosamath had filed caveat for respon-dent-2; his name had not been shown; accordingly I directed the Office to show the name of Mr. D.S. Hosamath and post the matter for hearing today.

4. Mr. D.S. Hosamath raised a preliminary objection regarding the maintainability of this Revision Petition. He also mentioned the circumstances under which the impugned order was passed and submitted that the petitioner is not entitled for any indulgence regarding the application filed for condonation of delay.

5. Mr. Anant Mandagi learned Counsel for the petitioner maintained that though ex facie there appears to be delay in filling the Revision Petition, since he was not a party to the proceedings before the Court below and the order was passed without impleading him as a party, he could challenge the same as and when it has come to his knowledge and there was no necessity to invoke Section 5 of the Limitation Act in other words, he submitted that though more than two years have elapsed, from the date of the passing of the impugned order, he could file this Revision Petition within a reasonable time after coming to know of it. He submitted that the application under Section 5 of the Limitation Act is filed as a matter of abundant caution though in the circumstances it was unnecessary. Regarding the maintainability of the Revision Petition, he submitted that the order is passed under Section 152 of the C.P.C. and notwithstanding the fact that the award is

amended, in pursuance of the said order, it was unnecessary for him to challenge the amended award by way of appeal and he could file this Revision Petition challenging the correctness of the order under Section 152. He submitted that if the Revision Petition is entertained and the impugned order is set aside, the amended, decree which is only consequential, falls to the ground and it is not necessary to get it set aside or quashed. He maintained that while the amended decree may be appealable, in the circumstances it is not necessary to challenge the said decree.

6. To appreciate the rival contentions, it is necessary to mention certain facts.

In LAC 1269/1977, the II Additional Civil Judge, Belgaum, awarded compensation in respect of the land which was acquired for the Airport. Authorities. This order was passed on 29th March 1985. There was no appeal against the said order and the same became final. After the Land Acquisition Act was amended, the claimant made an application seeking amendment of the award in terms of the amended provisions. Since the award has been passed after 13th April 1982, the Court below amended the award extending the benefits under the amended Sections 23 and 28 of the Land Acquisition Act. In these proceedings, the Government were notified and its objections were heard.

7. The learned Civil Judge, after considering the various rulings of this Court and the Supreme Court, allowed the application granting the benefits under the amended Sections 23 and 28.

8. Mr. Hosamath learned Counsel for the claimant submitted, which fact is not disputed, that in pursuance of the impugned order, the award has been amended and the amended award is put in execution.

9. The present petitioner has filed this Revision Petition on the ground that the land was acquired for its benefit and since he was not heard in the proceedings under Section 152 C.P.C., the order is a nullity and therefore this Revision Petition should be entertained.

10. In the above background the following questions emerge for consideration:

1. Whether the petitioner is entitled to invoke. Section 115 C.P.C. and this Court can exercise its revisional jurisdiction and interfere with the impugned order notwithstanding the fact that no appeal is filed against the amended award?

2. Whether this Revision Petition could be entertained after lapse of 831 days without allowing the application filed under Section 5 of the Limitation Act?

11. At the hearing, Mr. Hosamath has filed his objections, the relevant portion of which reads thus:

'In fact the petitioner was aware of the impugned order and the decree was amended in the month of August 1938, when the acquiring authority had written a letter and was received by the petitioner. Thereafter number of reminders were sent by the S.L.A.O. and also by the State and finally a telex message was also sent to the petitioner to deposit the money. Even after the knowledge the petitioner has filed this petition after one year two months. Nothing is stated about this delay. The petition is liable to be dismissed.'

12. On the question of maintainability of this Revision Petition, Mr. Anant Mandagi submitted that the order without issuing notice to the petitioner was a nullity and void and was unnecessary co be set aside.

13. This contention has to be rejected following the decision of this Court, to which I was a party, in K. KRISHNAMURTHY v. HEMANNA, ILR 1987 KAR 1466. After quoting several authorities on this aspect, it was held by the Bench that the orders of the Appellate Authority in the said case were valid and binding notwithstanding the fact that the appellant therein was not notified and was not a party to those proceedings. For the elaborate reasons given in the said decision, this contention has to be rejected.

14. The next limb of the argument of Mr. Mandagi was that without challenging the amended decree, the petitioner can maintain and challenge the impugned order. Strong reliance was placed on the decision of the Supreme Court in GANPAT RAI HIRALAL AND ANR. v. THE AGARWAL CHAMBER OF COMMERCE LTD. : [1953]4SCR752 . That was a case wherein the Division Bench of Pepsu High

Court dismissed the appeal against the order of the Single Judge on the ground that there was no certificate by the single Judge to the effect that the case was a fit one for appeal. The said ruling has no direct bearing on the issue in debate. But Mr. Mandagi sought to derive sustenance on the ground that since no appeal is provided against the order passed on an application under Section 152 C.P.C. notwithstanding the amended award, he could maintain this Revision Petition against the said order. He relied upon the following passage in the above Judgment:

'...No appeal is provided under the Civil Procedure Code from an order amending or refusing to amend a Judgment, decree or order; though an appeal would lie from the amended decree or order. There is no warrant for the view that the amendment petition is a continuation of the suit or proceedings therein. It is in the nature of an independent proceeding, though connected with the order of which amendment is sought. Such a proceeding is governed by the law prevailing on its date, which admittedly is Pepsu ordinance 10 of 2005, and which provides in Section 52 for a certificate.'

15. Unhesitatingly the order passed on an application under Section 152 C.P.C. is not appealable. But if, as in the instant case, in pursuance of the said order the decree is amended and the order of the Court is incorporated in the decree there cannot be two opinions that the aggrieved party has to challenge the amended decree or award and not the order preceding the amended decree. The order having crystallised itself into a decree, in a challenge to the decree, the reasoning adopted in the order could be challenged. To ignore the amended decree in such circumstances is to close the eyes to the factual realities and entertain an application on hypothesis. Such a thing is impermissible. The Judgment referred to above does not help the petitioner in advancing the case now pleaded.

16. Mr. Mandagi thereafter referred to a decision of this Court reported in RAMACHANDRIAH v. SPL. LAO, 1966(2) Mys.L.J. 375. In the said case, the order challenged was an order refusing to entertain an application for amendment. This Court allowed the Revision Petition and set aside the order passed by the learned Judge directing him to draw up a decree awarding compensation to the

petitioner. In my view there is a marked distinction between refusing the application for amendment and the order allowing the amendment. In the former case the decree sought to be amended remains intact and undisturbed; therefore the only order which is open to attack is the order refusing amendment. The above Judgment is not a precedent for holding that what applies to a case where the application for amendment is rejected is equally applicable to a case where the application for amendment is allowed and the decree or award is amended.

17. The other case relied upon by the learned Counsel deals with the amendment of the plaint after the decree is passed. The said case has hardly any bearing on the point now debated.

18. In VISVANATHAN CHETTI v. RAMANATHAN CHETTI AND ORS., ILR 24 Madras 646, it was held that High Court will not interfere in revision under Section 622 (which is equivalent to Section 115 CPC) if the party had other remedies open to him. It was further observed that the defendant could have appealed against the amended decree and got the relief if he was really entitled to it.

19. In ABDUL SATTAR AND OTHERS v. FAZAL.ul. RAHMAN AND ORS., AIR 1938 Lahore 331. the learned Single Judge who dealt with the matter has observed thus:

'I see no reason why an appeal should not lie from an amended decree though not from the order amending the decree. I therefore overrule the preliminary objection.'

20. For the aforesaid reasons, the preliminary objection raised by Mr. Hosamath that the petitioner's remedy was to file an appeal against the amended decree has to be upheld. Petitioner having not challenged the amended decree, cannot after a lapse of two years challenge the order amending the decree on the ground that he had no notice of the application filed under Section 152 C.P.C. This question also can be agitated while challenging the decree itself. But so long as the amended decree stands, it would be futile to contend that that decree has no effect and petitioner need not question the correctness of the same. Therefore I have to conclude that this Revision Petition is misconceived and is not maintainable. The inordinate delay of 331 days in filing the Revision Petition is a factor which

requires to be considered in appreciating the conduct of the party particularly in the light of the facts mentioned in the objection statement. The stand taken by the learned Counsel for the petitioner that the application is filed as a matter of abundant caution and in fact there is no delay at all and it is unnecessary to file an application for condonation of delay precludes me from going into the merits of the reasoning in support of the application filed under Section 5 of the Limitation Act.

21. As I have come to the conclusion that this Revision Petition itself is not maintainable, this Revision Petition is rejected with costs. Advocate's fee Rs. 500/- to be paid to the Counsel for respondent-2.

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