

B.N. Rangegowda Vs. Akbar Salt

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Court : Karnataka

Decided On : Jul-12-1990

Reported in : ILR1990KAR2936

Judge : Chandrakantaraj Urs and ;Ramakrishna, JJ.

Acts : Karnataka High Court Act, 1961 - Sections 4 and 10; [Constitution of India](#) - Articles 226 and 227; Writ Proceedings Rules, 1977

Appeal No. : O.S.A. No. 7 of 1989

Appellant : B.N. Rangegowda

Respondent : Akbar Salt

Advocate for Def. : T.R. Subbanna, Adv. for R-1 and R-2 and ;S.V. Jagannath, Adv. for R-3

Advocate for Pet/Ap. : R.B. Brahmavar, Adv.

Judgement :

Chandrakantaraj Urs, J.

1. This appeal was required to be registered as Original Side Appeal on 20-3-1989 after notice to the other side. As far back as December 16, 1988 this Court was made aware by the office noting that Original Side Appeal was not maintainable

under Section 4 of the Karnataka High Court Act, 1961 (for short 'the Act'). Therefore, on December 16, 1988 the Bench which heard the matter then directed notice regarding maintainability of the Original Side Appeal. On January 5, 1989 I.A.1 was directed to be considered along with the main appeal, which was directed to be posted for preliminary hearing. On February 17, 1989 the learned High Court Government Advocate was directed to take notice for the State and in regard to other respondents fresh notices were directed. Then on 20-3-1989 the appeal had been admitted, but stay of operation of the impugned order was refused. Thereafter, the matter has now come up for hearing. When the matter came up for hearing before the Division Bench of which one of us was a Member, we recorded our doubts about maintainability of the appeal as Original Side Appeal under Section 4 of the Act. To-day after hearing Mr. R.B. Brahmavar, learned Counsel for the appellant, we have no reason to change our earlier view.

2. The facts leading to the appeal can be stated and they are as follows:

Writ Petition No. 22121 of 1982 came to be allowed and the notice impugned therein came to be quashed by a learned Single Judge of this Court. That order was made on 19-3-1985. A review petition under Order 47 Rule 1 of the C.P.C. was filed seeking review of the order made in W.P.No. 22121 of 1982 dated 19-3-1985 in C.P.No. 176 of 1987. That came to be disposed of by the same learned Single Judge on 3-8-1988. The concluding portion of the order reads as follows:

'Therefore, in Writ Petition No. 22121/82, the observation made by me to that extent has to be deleted and it is ordered accordingly, making it clear that the Tribunal had no jurisdiction to revise its earlier order since the same was not challenged in the earlier Writ Petition as the Petition itself was withdrawn. This Civil Petition is accordingly allowed with this clarification.'The effect of that Order was to modify the earlier Order dated 19-3-1985 in the same Writ Petition. Therefore, the party aggrieved by such modified order gets a fresh cause of action to file an appeal with effect from the date of the order made In review petition viz., C.P.No. 176 of 1987. Section 4 of the Act does no more than providing that an appeal from a Judgment, decree, order or sentence passed by a Single Judge In the exercise of the original jurisdiction of the High Court under that Act or under

any law for the time being in force, shall lie and be heard by a Bench consisting of two other Judges of the High Court. That jurisdiction exercised by this Court under Article 226 of the [Constitution of India](#) is a original jurisdiction, cannot be doubted. But the question whether it falls under Section 4 of the Act or some other provision of the Act is the one we have to examine.

3. Section 10 of the Act provides as follows:

'10. Other powers of a Bench of two Judges:

The powers of the High Court in relation to the following matters shall be exercised by a Bench of two Judges:-

(i) a reference -

(a) under Section 113 of the Code of Civil Procedure 1908;

(b) under Section 395 of the Code of Criminal Procedure 1973 (Central Act 2 of 1974);

(ii) an application under Rule 2 of Order XLV of the First Schedule to the Code of Civil Procedure, 1908;

(iii) xxxxx

(iv) exercise of powers under Clause (1) of Article 226 of the [Constitution of India](#), where such power relates to the issue of a Writ in the nature of habeas corpus;

(iva) an appeal from any original judgment, order or decree passed by a Single Judge in exercise of the powers under Clause (1) of Article 226, Article 227 and Article 228 of the [Constitution of India](#);

(v) all other matters not expressly provided for in this Act, or any other law for the time being in force.'

Therefore, from the plain language of Sub-section (iva) of Section 10 of the Act it is clear that an appeal from any order made in a Writ Petition under Article 226 of the [Constitution of India](#) or its modification, necessarily by implication, shall be

disposed of by a Bench of two Judges. Therefore Sub-section (iva) of Section 10 of the Act is supplementary to Section 4 of the Act. Under the Writ Proceedings Rules 1977 framed by the High Court by virtue of the powers conferred on it under Articles 226 and 227 of the Constitution and all other powers thereunto enabling and in supersession of the existing Rules, as per Notification dated 29-1-1977 a Writ Appeal is provided from the order of a learned Single Judge to a Division Bench of this Court, and is governed by the provisions contained in Part-III of the Writ Proceedings Rules. Therefore, when the Order in Writ Petition No. 22121 of 1982 is modified, as noticed by us earlier, the aggrieved party had a distinct cause of action to prosecute an appeal under Part-III of the Writ Proceedings Rules and he can pursue only that remedy and no other. As such no appeal lies under Section 4 of the Act to a Division Bench, though an appeal does lie on the Writ Side. The appellant before us is free to move this Court by a proper application for conversion of this appeal into a Writ Appeal provided he satisfies the other requirements of the Writ Proceedings Rules in regard to period of limitation etc. Therefore, we hold that this Appeal is not maintainable as a Original Side Appeal and as such direct the office to return the papers.