

Rev. T. Ananthan and Others Vs. P.C. BenjamIn and Others

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SooperKanoon Citation : sooperkanoon.com/423704

Court : Andhra Pradesh

Decided On : Jun-19-1991

Reported in : AIR1992AP93; 1991(2)ALT572

Judge : Sardar Ali Khan and; P. Venkatarama Reddi, JJ.

Acts : Andhra Pradesh Civil Courts Act, 1972 - Sections 17 and 32, 32(1), (5) and (6) ; [Code of Civil Procedure \(CPC\), 1908](#); [Limitation Act, 1963](#) - Sections 4

Appeal No. : A.A.O. No. 845 of 1991

Appellant : Rev. T. Ananthan and Others

Respondent : P.C. BenjamIn and Others

Advocate for Pet/Ap. : S. Ananda Reddy, Adv.

Judgement :

ORDER

Sardar Ali Khan

1. By an orderdated 17-8-1991 a learned single Judge of this Court has referred this C.M.A. to a Division Bench for an authoritative pronouncement on the question as to whether an appeal, aggrieved by an order passed by the Vacation Civil Judge (Additional District Judge), Nel-lore, during vacations, in I. A. 385/91 in O. S. 25/91 on 31-5-1991, can be filed in the High Court. The learned single Judge

entertained a doubt about the provisions of S. 32(5) and (6) read with S. 17 of the A. P. Civil Courts Act, 1972 and expressed his dissent with the decision rendered by another learned single Judge, reported in V. Rama Rao v. K. Balakotaiah, (1985) 2 Andh LT 276. In the order under reference it is stated that in the normal course an appeal shall lie to the Subordinate Judge's Court or the District Court, as the case may be, against the decree or order passed by the District Munsif. Further more, it is stated that the scheme contemplated under S.32 is only limited during the vacation of the Civil Courts and in this case the suit was laid just three days before the courts would re-open after summer vacations.

2. The learned Vacation Civil Judge passed an interim order, dated 31-3-1991 in I.A. 385/91 in O. S. No. 25/91, directing to convene the Body meeting or in accordance with the registered constitution and by-laws registered on 15-7-1954 in administering the society and ordered notice to the other side returnable by 6-6-1991 by which time the courts were to re-open after summer vacations and further proceedings were to continue in the District Munsif's Court.

3. In order to answer the reference, we have carefully considered S. 32 of the A. P. Civil Courts Act, 1972. It would not be out of place to re-produce hereunder the relevant provisions of S. 32 of the A. P. Civil Courts Act, 1972, which are as follows:--

'32. Appointment of Vacation Civil Judge:--

(1) notwithstanding anything in this Act or in the Code of Civil procedure, 1908, the High Court may, for the duration of the adjournment of any District Court in summer, appoint for such District Court a Vacation Civil Judge not below the rank of a District Judge or the Government may, after consultation with the High Court so appoint a Vacation Civil Judge not below the rank of a Subordinate Judge.

(2) xx xx xx (3) xx xx xx (4) Notwithstanding the appointment of the Vacation Civil Judge every Court in the District shall, during the period it is adjourned for summer vacation be deemed to be closed for the purpose of Section 4 of the [Limitation Act, 1963](#).

(5) On the reopening of the District Court, a Court of Subordinate Judge or a Court of District Munsif after the summer vacation, all suits, appeals and other proceedings pending in the court of the Vacation Civil Judge, which, but for this section would have been instituted or pending in such District Court, Court of Subordinate Judge or Court of District Munsif, as the case may be, shall stand transferred to the Court concerned and any judgment, decree, order or proceeding passed by the Vacation Civil Judge, shall, after such transfer, be deemed to be a judgment, decree, order or proceeding passed by the court concerned.

(6) Notwithstanding the provisions of subsection (5) any appeal from the judgment, decree or order of the court of the Vacation Civil Judge shall, when such appeal is allowed by law, lie to the High Court.'

4. A reading of the above sub-sections clearly reveals the fact that the High Court may, for the duration of the adjournment of any District Court in summer, appoint for such District Court a Vacation Civil Judge, not below the rank of a District Judge, or the Government may, after consultation with the High Court, so appoint a Vacation Civil Judge, not below the rank of a Subordinate Judge. Under sub-sec.

(4) of S. 32 it is provided that notwithstanding the appointment of the Vacation Civil Judge every Court in the district shall, during the period it is adjourned for summer vacation be deemed to be closed for the purpose of S. 4 of the Limitation Act, 1963. The two crucial sub-sections, which fall for our consideration, are sub-sections

(5) and

(6) of S.

32. Under sub-sec.

(5) it is provided that on the re-opening of the District Court, a Court of Subordinate Judge or a Court of District Munsif after the summer vacation, all suits, appeals and other proceedings pending in the Court of the Vacation Civil Judge, which, but for this section, would have been instituted or pending in such

District Court, Court of Subordinate Judge or Court of District Munsif, as the case may be, shall stand transferred to the Court concerned and any judgment, decree, order or proceeding passed by the Vacation Civil Judge, shall after such transfer be deemed to be a judgment, decree order or proceeding passed by the Court concerned. It is thus provided under sub-sec.

(5) that the orders passed by the Vacation Civil Judge during the vacation shall stand transferred to the Judge during the vacation shall stand transferred to the Court concerned on the re-opening day and on such transfer the order, judgment of decree, as the case may be, shall be construed to be an order, judgment or decree of the Court concerned. Now, coming to sub-sec.

(6) it would be seen that the section starts with a non-obstante clause and reads that notwithstanding the provisions of sub-sec.

(5) any appeal from the judgment, decree or order of the Court of the Vacation Civil Judge shall, when such appeal is allowed by law, to one High Court. We are mainly concerned with the ambit and scope of sub-sec.

(6) of S. 32.

5. The question which arises for consideration in this matter is whether an appeal from the order passed by the Vacation Civil Judge shall lie to the High Court or shall be entered by the regular courts in accordance with the provisions of sub-sec.

(5). We have already stated that sub-sec. (5) promulgates a deeming provision under which a judgment, order or decree passed by a Vacation Civil Judge automatically stands transferred to the Court in which they were to be instituted had there been no vacation period.

6. Mr. S. Ananda Reddy, learned counsel for the appellant has submitted that the scope of sub-sec. (6) is bound to be wide enough to cover the provisions of sub-sec. (5). In other words, his contention is that the scope of the non-obstante clause renders the provision of sub-sec. (5) inoperative in so far as the question of an appeal against the order passed by a Vacation Civil Judge is concerned. The learned counsel is submitting that on appeal from the judgment, decree or order of

the Court of the Vacation Civil Judge, when such appeal is allowed by law, is necessarily to be filed in the High Court alone and not in any other subordinate Court to which the appeal would normally lie under S. 17 of the A.P. Civil Courts Act, 1972. The rationale of this judgment advanced by the learned counsel seems to be that if an order has been passed by a Vacation Civil Judge who happens to be a District Judge, it cannot be said that an appeal against the said order can be entertained by an inferior Judicial Officer like that of a Subordinate Judge or anyone else, as the case may be. To save such a situation, argues the learned counsel, the Legislature has enacted sub-sec. (6) of S. 32. By the said provision the rule has been engrafted that any appeal whatsoever from the order of a Vacation Civil Judge shall always lie to the High Court and will not come within the ambit and scope of the fiction created under sub-sec. (5) of S. 32. In *V. Rama Rao v. K. Balakotaiah* (1985 (2) Andh LT 276) (supra), the same matter was considered by Ramaswamy, J., as he then was. It was held in that case that the appeal against the orders of the Vacation Civil Judge shall lie only to the High Court and that by an appointment of a Vacation Civil Judge the power exercisable by the concerned Presiding Officer of the Court stands transferred to the Vacation Civil Judge. By this fiction of deeming provision under sub-sec. (5) of S. 32 the judgment, decree or order passed by the Vacation Civil Judge was declared to be the judgment, decree or order passed by the Court concerned. The Legislature has engrafted sub-sec. (6) of S. 32 with a view to ensure that the order passed by the Vacation Civil Judge shall not be entertained in appeal by a Judicial Officer who may be inferior in rank to the Vacation Civil Judge. The learned single Judge has further observed in the above cited case as follows :--

'.....The ambit of the entire S. 32 is based on legal fiction. The object appears to be that during summer vacation, the litigant, in urgent cases instead of driving him/her to approach the High Court and to avoid overburden to the High Court and to make avail of easy and inexpensive access to Courts, enacted S.32. On appointing a Vacation Judge, he should be conferred with jurisdiction. So the fictional deemed closure of the Civil Courts in the District is engrafted in sub-sec.(4) of S.32. In appointment of a Vacation Civil Judge, the power exercisable by the concerned presiding officer of the Court stands transferred to the Vacation Civil Judge. As a result, by further fiction of deemed provisions under sub-sec. (5)

of S. 32, the judgment, decree declared to be deemed to be the judgment, decree or order passed by the Court concerned. The Legislative animation in engrafting sub-sec. (6) of S. 32 appears to be that the order passed by the Vacation Civil Judge shall not be dealt with by the Judicial Officer inferior to the Vacation Civil Judge. It is already seen that under sub-sec. (1) of S. 32 of the Act, the Vacation Civil Judge shall be not below the rank of a subordinate Judge.'

We are inclined to agree with the view expressed by the learned single Judge in the case cited above. Sub-sec. (6) of S. 32 starts with a non-obstante clause referring to the provisions of sub-sec. (5) and provides that any appeal from the judgment, decree or order of the Court of the Vacation Civil shall, when such appeal is allowed by law, lie to the High Court. Emphasis is laid on the question of filing of appeals against the orders of the Vacation Civil Judge. In all other matters, the order passed by a Vacation Civil Judge may be deemed to be the order passed by the Court concerned by a fiction of law consequent upon the re-opening of the courts. But in so far as the question of appeal is concerned, sub-sec. (6) creates an exception and provides that such appeals lie only to the High Court. It would be difficult to visualise that an order passed by a District Judge should be challenged in appeal before a Sub-ordinate Judge. Apart from the question of judicial embarrassment it may perhaps be a truism to say that it would affect the proper and effective functioning of a Subordinate Judicial Officer. Therefore, in recognition of the principle that the very term 'appeal' envisages an appeal to a higher authority from one which has passed the original order. It is in the fitness of things that sub-sec. (6) provides for such an appeal to be entertained by the High Court. The order passed by the Vacation Civil Judge during the vacation in any case continues to be the order of the Vacation Civil even after the vacation but by a fiction of law created under sub-sec. (5) it is deemed to be one which has been passed by the Court concerned which otherwise would have been the proper Court of jurisdiction to pass such an order. It is a well-settled principle of interpretation of statutes that a non-obstante clause is meant to give an overriding effect to a provision and it must be so interpreted as to give full meaning to the intention of the Legislature unless there are some exceptional reasons to restrict such an interpretation. To hold to the contrary would amount to being oblivious of the provisions of the non-obstante clause occurring in sub-sec. (6) of

S. 32 enacted with a definite purpose. Of course, as far as S. 17 is concerned, there cannot be much debate about the scope of that section in this matter as it provides that normal challels of appeal which can be invoked by a person to whom such a remedy is available. Such an interpretation, therefore, cannot be considered to be against the scheme of the Act. Sub-sec. (6) has been enacted with a special purpose of filing of the appeals against the judgment, decree or order of the Court of the Vacation Civil Judge in the High Court as against the general provision of S. 17. We are inclined to prefer the view expressed by Ramaswamy, J. in V. RamaRao v. K. Balakotaiah, (1985 (2) Andh LT 276) (supra) referred to above.

7. In view of the above discussion, we hold that the appeals arising out of the judgment, decree or order of the Court of the Vacation Civil Judge should be filed only in the High Court.

8. The reference is answered accordingly.

9. Post the C.M. A. for admission before a learned single Judge.

10. Order accordingly.