

M. Murugeshan and ors. Vs. Union of India (Uoi) and ors.

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Court : Kolkata

Decided On : Aug-30-2007

Reported in : 2007(4)CHN759

Judge : Subhro Kamal Mukherjee and ;Kalidas Mukherjee, JJ.

Acts : [Aircraft Act, 1934](#) - Section 9A, 9A(1), 9B, 9B(1), 9C and 9D; ;Arbitration Act; ;Workmen's Compensation Act; ;Railways Act; ;Motor Vehicles Act; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 104(1) - Order 43, Rules 1 and 11; ;[Constitution of India](#) - Article 226; ;Calcutta High Court Appellate Side Rules - Rules 2(3) and 17

Appeal No. : FAT No. 001 of 2007

Appellant : M. Murugeshan and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Tamali Biswas, Adv. for respondent No. 1 and ;Sautosh Kumar Mandal and ;Anil Kumar Chakraborty, Advs. for respondent Nos. 2 to 9

Advocate for Pet/Ap. : Aujili Nag, Adv.

Judgement :

1. It is matter of regret that the Stamp Reporter of this Court has not taken any objection as to the classification of the appeal.

2. We are of the opinion that the appeal has not been properly classified.

3. Under Section 9A of the [Aircraft Act, 1934](#) (the said Act in short) any person aggrieved by an award of the Arbitrator made under Section 9B(1)(c) of the said Act may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the aerodrome is situate. However the High Court may entertain the appeal after the expiry of the said period of thirty days if the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 9A of the said Act recognises the powers of the Central Government to prohibit or regulate construction of buildings, planting of trees etc. if the Central Government is of the opinion that it is necessary or expedient so to do for the safety of aircraft operations.

Section 9B of the said Act contemplates payment of compensation if in consequence of any direction contained in any notification issued under Sub-section (1) of Section 9A of the said Act, any person sustains any loss or damage. Such compensation is to be determined in the manner and in accordance with the principles set out in the said Section 9B.

Under Section 9B(1)(a) of the said Act where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement. Under Section 9B(1)(b) of the said Act where no such agreement can be reached, the Central Government shall appoint as arbitrator a person, who is or has been qualified for appointment as a Judge of a High Court. Under Section 9B(1)(e) arbitrator shall, after hearing the dispute, make an award determining the amount of compensation, which appears him to be just and specify the person or persons to whom such compensation shall be paid. Under Section 9B(1)(g) of the said Act nothing in the Arbitration Act shall apply to the arbitrations under the said Act.

Under Section 9D of the said Act the Arbitrator, while holding arbitration proceedings under the said Act, shall have all the powers of the Civil Court while trying a suit under the Code of Civil Procedure in respect of certain matters only.

4. In this case, the Arbitrator made his award on December 4, 2006. Being aggrieved the claimants have preferred this appeal. This appeal has been classified by the claimants/appellants as an appeal from original decree (first appeal). This is an appeal certainly not against the original decree. Therefore, the appellants were wrong in classifying the appeal as an appeal from original decree.

5. For the purpose of appealability, the Code of Civil Procedure has divided the orders broadly into the following categories:

(a) orders which are not appealable,

(b) orders which are appealable according to the provisions contained in the body of the Code,

(c) the orders which have been made appealable by any other law for the time being in force,

(d) orders specified by Clauses (ff), (ffa), (a) and (g) of Sub-section (1) of Section 104 of the Code, and

(e) orders made under the rules from which an appeal has been expressly allowed under Order 43, Rule 1.

We, however, hastened to add that no appeal lies from an order passed in appeal under Section 104 of the Code of Civil Procedure.

6. However, the Code of Civil Procedure has not made any provisions for nomenclature and classification of the appeals. However, this Court framed rules for regulating the proceedings in its appellate jurisdiction; the rules are known as the Appellate Side Rules of the High Court at Calcutta.

7. Under Rule 2(3) of Chapter II of the Appellate Side Rules, the Registrar, in addition to the powers conferred by him by other rules, is to receive an appeal from the decree or order of a subordinate Civil Court, and in case of second appeals and appeals from orders, if in order, to post them for hearing under Order 41 Rule 11 of the Code of Civil Procedure, and, in the case of appeal from original decrees, to issue notices as soon as the appeal is registered.

8. Rule 17 of the Chapter V of the Appellate Side Rules requires that in the case of an appeal from an original decree, an appeal under the Workmen's Compensation Act, an appeal from an order under Article 226 of the [Constitution of India](#), an appeal under the Indian Railways Act, and an appeal under the Motor Vehicles Act should be admitted and registered and notices would to be issued to the respondents, but in the case of an appeal from appellate decree or an appeal from an order other than an appeal under the Workmen's Compensation Act, an appeal from an order under Article 226 of the [Constitution of India](#), an appeal under the Indian Railways Act and an appeal under the Motor Vehicles Act should be admitted, and registered and posted to a Bench for hearing under Order 41 Rule 11 of the Code of Civil Procedure.

9. Thus, this appeal should be posted to a Bench for hearing under Order 41 Rule 11 of the Code of Civil Procedure.

10. In our considered opinion an appeal filed under Section 9C of the [Aircraft Act, 1934](#) should be classified as an appeal from original order (first miscellaneous appeal) and should be posted for hearing to a Bench under Order 41 Rule 11 of the Code of Civil Procedure.

The learned Advocate for the appellant is directed to amend the cause title of the memorandum of appeal and to classify same properly.

11. Put up this appeal on August 31, 2007 for hearing under Order 41 Rule 11 of the Code of Civil Procedure.

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