***THE HON'BLE SRI JUSTICE SUJOY PAUL**

+CIVIL REVISION PETITION No.1689 of 2024

% 30-08-2024

#M/s. Vishnu Oil Industries and others

...Petitioners

vs.

$Ramavtar Sarda and another.

... Respondents

!Counsel for the Petitioners: Sri Bankatlal Mandhani.

^Counsel for Respondent No.1: Sri K.K. Waghray.

<Gist :

>Head Note :

? Cases referred

1. 2023 SCC Online SC 95
2. 2014 (1) ALD 306
3. (1990) 1 SCC 400
4. (2004) 4 SCC 766
5. 1953 AIR 274
6. 1987 AIR 1023
7. (1977) 2 SCC 256.

IN THE HIGH COURT FOR THE STATE OF TELANGANA HYDERABAD

*** * * ***

CIVIL REVISION PETITION No.1689 of 2024

Between:

M/s. Vishnu Oil Industries and others

...Petitioners

vs.

Ramavtar Sarda and another.

... Respondents

JUDGMENT PRONOUNCED ON: 30.08.2024

THE HON'BLE SRI JUSTICE SUJOY PAUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? :

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? :

3. Whether His Lordship wishes to see the fair copy of the Judgment? :

SUJOY PAUL, J

THE HONOURABLE SRI JUSTICE SUJOY PAUL

CIVIL REVISION PETITION No.1689 of 2024

ORDER

Sri Bankatlal Mandhani, learned counsel for the petitioners. Sri K.K.Waghray, learned counsel for the respondents.

2. Heard on the question of preliminary objection of maintainability/entertainability.

3. This Civil Revision Petition filed under Article 227 of the Constitution of India is directed against the order dated 11.03.2024 in I.A.No.393 of 2022 in O.S.No.479 of 2018.

4. The preliminary objection raised by the learned counsel for the respondents is that the impugned order dated 11.03.2024 is appealable under Order XLI Rule 1 r/w Section 96 of C.P.C. Learned counsel appearing for the petitioners submits that a plain reading of Order 12 Rule 6 makes it clear that the trial Court was under a statutory obligation to pass a preliminary decree. The impugned order shows that the trial Court has failed to draw any such preliminary decree. Further, after passing the impugned order, the trial Court has framed issues. In view of the heading above Order XLI i.e., “Appeals from original decrees”, it is urged that the appeal can lie only when a decree is drawn. Since, admittedly, no decree has been drawn, the petitioner cannot be relegated to avail the remedy of appeal.

5. Apart from this, by placing reliance on the judgment of the Supreme Court in ***Godrej Sara Lee Ltd.*** v. ***Excise and Taxation Officer-cum-Assessing Authority***[1], it is submitted that when order is patently illegal and question involved is a pure question of law, despite availability of alternative remedy, this petition can be entertained.

6. Sounding a *contra* note, learned counsel for the other side submits that Rule 1 of Order XLI has undergone amendment by Act 46 of 99 w.e.f. 01.07.2002. The last portion of Rule 1 of Order XLI is substituted by the word 'judgment' in place of "Decree appealed from and of the judgment on which it is founded". Thus, the petitioners have a remedy to prefer an appeal. The present petition is not maintainable. In support of his submission, he placed reliance on the judgment of this Court in ***B.Kesav Rao*** v. ***P.Sivannarayana***[2].

7. Parties confined their argument on the question of maintainability/entertainability to the extent indicated above.

8. I have heard the parties.

9. Before dealing with rival contentions advanced at the bar, it is apposite to reproduce the heading above Rule 1 of Order XLI of C.P.C. The relevant portion of Rule 1 of Order XLI reads as under:-

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[1] 2023 SCC Online SC 95
[2] 2014 (1) ALD 306

Order XLI

APPEALS FROM ORIGINAL DECREES

> ***"1. Form of appeal – What to accompany memorandum:-*** *(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the judgment."*
>
> *(Emphasis Supplied)*

10. The parties are at loggerheads on the question of maintainability of this petition filed under Article 227 of the Constitution of India. As noticed above, the learned Senior Counsel for the petitioners placed heavy reliance on heading above Order XLI i.e., **"Appeals from original decrees"**. Much emphasis is laid on the word "Decrees". On the contrary, learned counsel for the other side placed reliance on the amendment in Rule 1 of Order XLI, whereby, the last sentence "Decree appealed from and of the judgment on which it is founded", is substituted by the word "judgment". Thus, interesting question is whether, the heading of Order XLI will determine the nature of the document (decree or judgment) to be accompanied with appeal or the substantive provision namely Rule 1 of Order XLI. This point relating to interpretation is no more *res integra*.

11. The Apex Court in ***Frick India Ltd.*** v. ***Union of India***[3] held as under:-

[3] (1990) 1 SCC 400

> *"8. It is well settled that the headings prefixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision."*
>
> (Emphasis Supplied)

Similarly, the Apex Court in ***Raichurmatham Prabhakar*** v. ***Rawatmal Dugar***[4] held as under:-

> *"In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder."*

12. In view of these authoritative pronouncements by the Apex Court, there is no cavil of doubt that the heading will not be decisive, instead, the substantive part of the statute which is clear and unambiguous will be decisive.

13. It is equally important to note that legislative intent behind substituting the word 'judgment' in place of earlier phrase containing 'decree' also makes it clear that intention of Law Makers was to provide an appeal against the "judgment". Thus, consciously, the previous provision namely "Decree appealed from and of the judgment on which it is founded", was substituted by the word 'judgment'.

[4] (2004) 4 SCC 766

14. The conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. *Justice G.P.Singh* in his celebrated book *'Principles of Statutory Interpretation'* stated that the intention of law maker assimilates two aspects. In one aspect, it carries the concept of 'meaning' and in another aspect, it conveys the concept of 'purpose' and 'object'.

15. 'Each word, phrase and sentence' observed MUKHERJEA,J 'is to be construed in the light of general purpose of Act itself' (see **Poppatlal Shah v. State of Madras**[5]).

16. In the words of CHINAPPA REDDY.J, 'interpretation must depend on the text and context. They are bases of interpretation. One may well say if text is the texture, context is what gives colour. Neither can be ignored. That interpretation is best which makes the textural interpretation match the contextual. A statute is best interpreted when you know why it was enacted (see **Reserve Bank of India v. Peerless General Finance and Investment Company Ltd.**[6]).

17. The words of wisdom by KRISHNA IYER, J are: 'to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of *deha* and *dehi* of the provision (see **Chairman, Board of Mining Examination v. Ramjee**[7])'.

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[5] 1953 AIR 274
[6] 1987 AIR 1023
[7] (1977) 2 SCC 256

The legislative intention and contextual interpretation of amended Rule 1 of Order XLI shows that appeal can be filed accompanying copy of judgment.

18. I also find substance in the argument of the learned counsel for the respondents that the petitioners have a remedy of appeal against the impugned order. For yet another reason, I am inclined to agree with the learned counsel for the respondents. In ***B.Kesava Rao's*** case (2 supra), this Court considered the previous judgments and opined as under:-

> *"5. In identical circumstances this Court held in Mohammed Mohinuddin Ali v. Mahesh Kumar Asava and another, 2004 (1) ALD 880 = 2004 (1) ALT 591, that against such a judgment and decree in respect of a part of the suit amount passed under Order XII Rule 6 of C.P.C on the basis of the admissions made in the written statement, an appeal lies under Section 96 of C.P.C and not a revision under Article 227 of the Constitution of India. It was also explained by this Court that when an efficacious alternative remedy by way of appeal is available, jurisdiction under Article 227 of the Constitution of India cannot be invoked."*
>
> (Emphasis Supplied)

Since in number of similar cases, a consistent view was taken by this Court, it will not be proper to deviate from that view. In view of judgment of ***Godrej Sara Lee Ltd.'s*** case (1 supra), in the considered opinion of this Court, this petition is not 'entertainable'.

19. Accordingly, the Civil Revision Petition is **disposed of** by reserving liberty to the petitioner to avail the remedy of appeal. No costs.

Interlocutory applications, if any pending, shall also stand closed.

JUSTICE SUJOY PAUL

Date: 30.08.2024
Sa/nvl