

* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 21.02.2012

+ FAO(OS) No.41/2011

TILAK RAJ SINGH APPELLANT

Vs

UNION OF INDIA RESPONDENT

Advocates who appeared in this case:

For the Appellant : Mr. Vishwa Bhushan Arya, Advocate

For the Respondent : Mr. Vibhu Shankar, Advocate

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The present appeal arises in unfortunate circumstances where the appellant for the last 21 years is seeking to know, as to the forum, which would adjudicate upon its claim for damages against the Railways. Over a span of two decades, the appellant has been unable to get an answer to this issue, since at every juncture his claim has been returned with the response that the forum concerned, does not have the jurisdiction to entertain and try the claim preferred by him against the Railways.

2. The appeal, in these circumstances, is thus directed against the judgment of the learned Single Judge dated 20.09.2010 passed in Interlocutory application being: IA No.746/2010 in CS(OS) 2082/2008.

The appellant, who is the plaintiff in the suit had filed an application under section 14 of the Limitation Act, 1963 (in short, the said Act), seeking in effect exclusion of time spent in prosecuting his claim in the first instance before the Civil Court at Meerut, and thereafter, before the Railway Claims Tribunal (in short, the Tribunal).

3. The appellant is aggrieved by the impugned judgment passed by the learned Single Judge, whereby his application under section 14 of the said Act has been dismissed and the suit has been held as being barred by limitation, and accordingly, resulted in the rejection of the plaint under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (in short, the Code). The operative portion of the judgment reads as follows :-

“...Accordingly, the application is dismissed and the suit is held to be barred by limitation and accordingly, the same is rejected under Order VII Rule 11(d) CPC. Parties to bear their own costs.”

4. In order to appreciate the scope of the appeal and the submissions made before us, the following facts are required to be noticed :-

5. The appellant on the fateful day i.e., 20.08.1987, was travelling by the Frontier Mail train. The appellant, evidently, boarded the train on the said date from Meerut. At the Muzaffarnagar Railway Station, the appellant attempted to disembark from the train. It appears that the area for disembarkation was poorly lit. The compartment, in which, the appellant was travelling, was not positioned alongside the platform. It appears that while the appellant was trying to disembark, the train moved once again. The appellant was evidently trapped between train and the

platform, causing grievous injury to one of his legs. As a part of treatment, the appellant was required to undergo amputation of the injured leg.

6. Qua this injury, the appellant was sanctioned “on humanitarian grounds” a paltry sum of Rs.5,000/-, as ex-gratia payment by the Government of India vide order dated 01.02.1990.

7. Being aggrieved by the compensation granted; on 03.01.1990 the appellant, filed a civil suit bearing no.217/1990, before the Civil Judge, Meerut.

8. After a period of twelve (12) long years, the Civil Court at Meerut, by an order dated 14.01.2002, came to a conclusion that it had no jurisdiction to entertain the appellant’s suit. Consequently, the plaint was returned to the appellant for presentation before “*a court of competent jurisdiction*”.

9. As a result of the aforesaid order; on 17.08.2005, the appellant preferred a claim before the Tribunal. The claim was accompanied with the plaint instituted with the Civil Court at Meerut. Because of the delay in approaching the Tribunal, the appellant, preferred an application for condonation of delay alongwith the main “*claim application*”. The Tribunal by a reasoned order dated 11.08.2006, condoned the delay. The claim application was, thus registered, and notice was issued to the respondents. This order has not been assailed by the respondents.

10. One would have thought that hereafter the travails of the appellant would come to an end. This was not to happen, as a bench of the Tribunal by an order dated 07.05.2008, came to a conclusion that, the

incident was an “*untoward incident*” within the meaning of Section 124-A of the Railways Act, 1989 (in short, the Railways Act), which provision having come into force w.e.f. 01.08.1994, would not include within its ambit, such untoward incidents, which had occurred prior to the said date. The accident in the present case, as indicated above, had occurred on 20.10.1987. Thus, the Tribunal, directed that the case be transferred to the District Judge, Meerut with a request for its trial and disposal by an appropriate court. The record of the case was despatched to the District Judge, Meerut by the Tribunal under the cover of its letter dated 30.06.2008.

11. It appears that the Civil Court, by a written communication dated 04.07.2008, declined to accept the case sent on transfer by the Tribunal on the ground that such an order could have only been passed by the High Court or the Supreme Court.

12. In view of the aforesaid circumstances, the Tribunal by an order dated 23.07.2008, directed return of the photocopy of all documents as well as certified copies of its judgment dated 07.05.2008, for presentation in the “*competent civil court*”. The Tribunal, further observed that, the original record would be sent to the court concerned, as and when, it was summoned by the concerned court. This order was passed, on an application dated 11.07.2008, filed by the appellant before the Tribunal.

13. Pursuant to the aforesaid order of the Tribunal, the appellant approached this court, by way of a civil suit. As indicated above, the suit was registered as CS (OS) 2082/2008.

14. It is in the instant suit, that the appellant filed his application under section 14 of the Limitation Act; which was dismissed by the impugned judgment.

15. In the background of the aforementioned facts, it was argued by Mr. Vishwa Bhushan Arya, on behalf of the appellant that the parameters laid down for exclusion of time under section 14 of the said Act had been fulfilled, in as much as, the appellant who was prosecuting the proceeding with due diligence and in good faith, till such time the civil court at Meerut held, that it had no jurisdiction to deal with the matter. The fact that there was lack of clarity on the issue, was demonstrable by virtue of the subsequent circumstance, which was the return of his claim application even by the Tribunal. The learned counsel for the appellant submitted that the learned Single Judge had erred, in as much as, he had attributed the lack of diligence and good faith to the appellant on the ground that even though the respondents had taken the defence that the civil court had no jurisdiction, the appellant continued with the proceedings. Mr. Arya submitted that till such issue was adjudicated upon by the Civil Court at Meerut, it could not have been said that the appellant had displayed, during its pendency, lack of diligence and good faith. Mr. Arya submitted that the error was compounded by virtue of the fact that the learned Single Judge appears to have misread the order of the Civil Court at Meerut dated 14.01.2002, as if, it directed the return of plaint for being instituted in an appropriate civil court. Mr. Arya contended that the learned Single Judge failed to notice that the respondents in their written statement before the Civil Court had taken a specific stand that the appropriate forum was the Tribunal. Therefore, in these circumstances, the appellant in good faith approached the Tribunal

after his plaint had been returned by the Civil Court at Meerut. Mr. Arya submitted that because the time spent before the Civil Court and the Tribunal by the appellant was not excluded, the court came to a consequential finding that the suit was barred by limitation.

16. On behalf of the respondent, arguments were addressed by Mr. Vibhu Shankar, Advocate. Mr. Shankar largely relied upon the impugned judgment to contend that the impugned judgment deserved to be sustained.

17. Having heard the learned counsels for the parties and perused the pleadings, documents and the orders on the record, we are of the view that the impugned judgment cannot be sustained for the reasons given hereinafter :-

17.1. A perusal of the impugned judgment would show that in paragraph 19, the learned Single Judge has come to an explicit finding that the original suit, which was filed before the Civil Court at Meerut was within the period of limitation. The learned Single Judge, however, thereafter proceeded to reject the appellant's plea for exclusion of time spent before the Civil Court at Meerut on the ground that, he ought not to have continued with the said proceedings once an objection was taken with regard to jurisdiction by the respondents. The learned Single Judge, erroneously, also observed in the same paragraph (i.e., paragraph 19 of the impugned judgment) that the appellant “....*did not chose to file the suit in civil court but preferred to file his claims in the Railway Claims Tribunal...*”. (emphasis is ours)

18. In our view, the aforesaid approach is completely flawed in law for the following reasons. Firstly, the appellant was entitled to test its stand, by seeking a definitive finding on the issue of jurisdiction from the Civil Court at Meerut. A mere plea in the written statement of lack of jurisdiction cannot be made the basis for coming to a conclusion that continuation of the proceedings before the Civil Court at Meerut displayed lack of due diligence and good faith.

18.1 Secondly, the observation proceeds on a factual error, which is, as if the civil court at Meerut while directing return of plaint, had advised institution of the claim in an appropriate civil court. As noticed by us above, the Civil Court at Meerut had infact returned the plaint to the appellant for presentation before “*a court of competent jurisdiction*”. The appellant bearing in mind the stand of the respondents, before the Civil Court at Meerut, approached the Tribunal, in good faith. The Tribunal, by an order dated 07.05.2008, came to the conclusion that the “untoward incident” having taken place prior to 01.08.1994, could only be prosecuted in a civil court. The said order was followed by an order dated 23.07.2008, whereby the claim application filed before the Tribunal was returned, when the District Judge at Meerut, refused to re-activate the suit proceedings at Meerut. These crucial aspects somehow appear to have not been appreciated by the learned Single Judge in the impugned judgment. In our view, the appellant has fulfilled the twin criteria of due diligence and good faith, as encapsulated in section 14 of the said Act, contrary to what has been held by the learned Single Judge. Accordingly, we are of the view that the impugned judgment cannot be sustained.

19. Accordingly, the impugned judgment is set aside. The interlocutory application being IA No.746/2010, is allowed. The parties shall appear before the learned Single Judge on 12.03.2012, for further proceedings in the matter.

SANJAY KISHAN KAUL,J

RAJIV SHAKDHER, J

FEBRUARY 21, 2012

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