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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL No.167 OF 2000

Smt. Mary wd/o George Monterio & 6 others.

-Vrs.-

Wasudeorao Ramkrishna Harode and 10 others.

WITH

FIRST APPEAL No.223 OF 2015

Smt. Mary wd/o George Ambrose & others.

-Vrs.-

Wasudeo Ramkrishna Harode and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.C. Mkehadia Advocate with Shri R.A. Jain Advocate
for appellants in both appeals.

Shri M.G. Bhangde Sr. Advocate with Shri R .M. Bhangde
advocate for respondents in both appeals.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 21th NOVEMBER, 2015

Both these appeals are preferred under section 96 of the Code of Civil Procedure against the common judgment and decree dated 27th March, 2000 passed in Special Civil Suit No. 801/1993 and Special Civil Suit No. 848/1999 by the Second Joint Civil Judge, Senior Division, Nagpur. The valuation of both the appeals for the purpose of court fees and jurisdiction is below rupees one crore. The hearing in these appeals commenced on 19.8.2015 and was concluded on 27.8.2015. The appeals were closed for judgment on that date. In the meantime, vide Maharashtra Civil Courts (Amendment) Act,

2015, the Maharashtra Civil Courts Act, 1869 came to be amended, inter alia, enhancing the pecuniary jurisdiction of the District Courts to decide appeals where valuation of the subject matter in dispute is upto one crore rupees. By issuing Government Notification dated 31.8.2015, the State Government has appointed 1st September, 2015 as the date on which the aforesaid Amendment Act shall come into force.

2. In the background of above subsequent developments, all pending appeals from orders where value of the subject matter is upto rupees one crore are directed to be transferred to the concerned district courts in view of Section 28 C of the Maharashtra Civil Courts (Amendment) Act, 2015. Accordingly, though both these appeals were required to be transferred to the concerned District Court for adjudication, we thought it proper to hear learned counsel appearing for the parties in the matter on the issue and for that purpose the matters were thus notified on the daily board on 19.10.2015.

On this date, we have heard the learned counsel for the parties on this limited issue, who contended that as the appeals are heard and closed for judgment, this court even after enhancement of pecuniary jurisdiction of the District Courts to decide appeals, the valuation of the subject matter of which is upto one crore rupees, can decide the appeals as the appeals are already closed for judgment. In support of their submissions, reliance is placed in the case of **Virendra Prasad Vs. The Union of India and others reported in 1986(4) SLR 471.** It was writ petition directed against the issuance of order of suspension as also a charge sheet against Regional

Provident Fund Commissioner at Calcutta. The hearing in this petition for all practical purposes was concluded on 7th May, 1986, but at the insistence of the parties for the purpose of submissions of written notes time was granted till 19th May, 1986, on which day it was brought to the notice of the Court by respondent that by a notification issued by Central Government under the Administrative Tribunal Act, 1985 High Court's power in entertaining writ petition as regards service matters came to be curtailed and were conferred on the Administrative Tribunal. Section 29 of the Act provided that suits or other proceedings pending before the Court or other authority immediately before the date of establishment of a Tribunal under the Act shall stand transferred on that date to such Tribunal and as such the High Court ought not to deal with the matter any further and the matter ought to be sent back to Tribunal for being dealt with before the Tribunal.

3. In the background of above facts, the counsel for petitioner in that case vehemently contended that pending proceedings within the meaning of Act of 1985 cannot mean the proceedings, hearing of which has been concluded since Section 29(4)(b) indicates that the Tribunal would have the option in respect of the transferred proceedings to proceed from the stage which was reached before such transfer. Section 29(4)(b) provides as follows :-

“The Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceedings, so far as may

be, in the same manner as in the case of an application under section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.”

It was accordingly contended that the proceedings within the meaning of the Act of 1985 cannot mean the proceedings, hearing of which has been concluded. Since Section 29(4)(b) indicates that the tribunal would have option to proceed with the matter from the stage reached before the transfer and the case of which hearing has been concluded is not therefore, contemplated under Section 29 and is not intended to be transferred to the Tribunal.

4. Learned counsel appearing for the respondent authority, on the contrary, contended that since the Tribunal has the power to hear the matter de novo and as Section 29 has used “shall stand transferred”, question of retaining further jurisdiction in the matter by this Court does not and cannot arise and the only course left open is to send the matter to the Tribunal for disposal in accordance with the provisions of the Act of 1985.

The Court having considering submissions advanced as such and on considering the objects and reasons of the Administrative Tribunal Act, 1985, has noted that the establishment of Administrative Tribunal under the provisions of Statute has become necessary since a large number of cases relating to service matters are pending before the various courts. The objects provide that it is expected that the setting up of such an Administrative Tribunal to deal exclusively with

service matters would go a long way in not only reducing the burden of various courts and thereby giving them more time to deal with other cases expeditiously and as such concluded that the basic object of Legislature was to reduce the pressure of work on the High Court and since in the given case as the High Court had heard the matter in detail for number of days and has concluded the hearing keeping the petition for the purpose of submitting written notes, remitting the matter to the Administrative Tribunal would not serve the object of the Act, since neither the Court's time would be saved nor the speedy justice can be achieved by the petitioner in respect of his grievances, and having considering so, decided the writ petition rejecting the contention of the respondent authority that the High Court has lost jurisdiction to entertain the matter any further.

5. As submitted above, the state government has appointed 1.9.2015 as the date on which the Maharashtra Civil Courts Act, 1869 has been amended enhancing the pecuniary jurisdiction of the District Courts to decide appeals where valuation of the subject matter in dispute is upto one crore rupees. As such, the pecuniary jurisdiction of District Courts has been enhanced to rupees one crore from that date. The valuation of both appeals is admittedly below rupees one crore. In that view of the matter, we are inclined to transfer present appeals to the concerned District Court though heard as the law relied by the parties, as referred to above, is in a writ petition filed under Article 226 of the Constitution of India and as such not covered by the Administrative Tribunal Act, 1985

and no jurisdiction to hear petition under Article 226 of the Constitution had been conferred to the Administrative Tribunal, in fact, such jurisdiction cannot be conferred by Statute but can only be conferred by the Constitution of India. There is no amendment to Article 226 of Constitution of India under which High Court alone can entertain application under Article 226 and Article 323A does not confer jurisdiction upon Tribunal to hear application under Article 226 or under Article 32 of the Constitution of India.

6. Arrangement made for trial of suits or hearing of appeals shows that the appeal remains pending for all practical purposes till the judgment is actually pronounced. All subsequent developments therefore can be brought to the notice of court which has heard the matter, if judgment is still to be delivered. The above precedent therefore has no application in present facts.

7. Having considering as above and also considering the fact that if the appeals are decided in either way by judgment, one of the parties would be deprived of its right to file second appeal, to this Court. We, thus, find it just and proper to remit both these appeals to the concerned District Court for its disposal according to law.

8. As requested by parties, we fix 15-12-2015 as the date of appearance of parties before the office of Principal District Judge, Nagpur.

Registry to take necessary steps.

JUDGE

JUDGE