

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.255 of 2015
IN
Civil Writ Jurisdiction Case No. 6920 of 2010**

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M/s Janta Cold Storage Mahnar, District Vaishali, through its one of the partners
Udai Shankar Jaiswal S/o Shiv Nandan Jaiswal.

.... Appellant

Versus

1. The Employees Provident Fund Organization, through Mr. Brijnandan Choudhary S/o Late Kishun Choudhary, Assistant Provident Fund Commissioner, having its office, R-Block Road, No.-6, Bihar, Patna.
2. The Employees Provident Fund Appellate Tribunal, through its Registrar Scope Minar, 4th Floor Core, 2 Laxmi Nagar, New Delhi-110092

.... Respondents

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Appearance :

For the Appellant : Mr. Hemendra Prasad Singh, Senior Advocate
Mr. Ramashray Roy, Advocate
For the Respondents : Mr. Prashant Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-07-2017

Heard counsel for the parties.

2. The Employees Provident Fund Organisation moved the High Court under Article 226 of the Constitution of India for quashing the order dated 15.06.2009 passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in A.T.A. No. 281(3) of 2001. By virtue of the order of the Tribunal, the Tribunal set aside the order dated 28.02.2001 passed by the Assistant Provident Fund Commissioner, Muzaffarpur, under Section 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ((hereinafter referred to as 'the Provident Fund Act') under



certain controversial circumstances.

3. The appeal of the present appellant moved before the appellate Tribunal was initially dismissed for default on 21.08.2007. A restoration application was filed before the Tribunal which did not find merit in the grounds for restoration, therefore, it decided to dismiss the restoration application on 25.02.2009. Overlooking the earlier order of dismissal of the restoration application, yet another restoration application was filed before the Tribunal which decided to restore the application on 05.05.2009 and thereafter decided the matter on the merits. The Regional Provident Fund authorities of Patna got aggrieved by such an action of the Tribunal and they decided, therefore, to challenge final order of the Tribunal dated 28.02.2001 as well as the order dated 05.05.2009, which was the order of restoration.

4. The learned single Judge went through the entirety of the facts, the relevant provisions relating to such restoration application, especially Rule 15 of the Employees Provident Funds Appellate Tribunal Procedure Rules, 1997, and a catena of different decisions not only of this Court, but even the Hon'ble Apex Court and then came to the considered opinion that the Tribunal had no business or power to entertain a second restoration application after much delay and then decide the matter on merits.



5. Since the learned single Judge was satisfied that the appellate Tribunal has committed a blatant illegality by passing the order of restoration dated 05.05.2009 and thereafter the order dated 15.06.2009 on the merits, both the orders were quashed and, therefore, the present Letters Patent Appeal.

6. Submission of learned senior counsel for the appellant is that there were circumstances under which the case got dismissed, in the very first place the counsel representing the present appellant expressed his inability to assist the Tribunal at Calcutta Camp Court and requested the matter to be heard in Delhi. That aspect was overlooked and the appeal came to be dismissed and restoration application was filed. The Tribunal was not satisfied with the reasons provided, which could form the basis for restoration and the restoration application stood dismissed. Thereafter a second restoration application was filed, which was allowed. The learned senior counsel for the appellant submits that it was not a second restoration application but a kind of review application against the order dated 25.02.2009.

7. Such a submission has been negated by the learned single Judge and we are inclined to uphold that view for the reason that the Tribunal had no business to entertain a second restoration application. It was not a review application as is being suggested and



the learned counsel representing the Provident Fund authorities is correct in placing reliance on a very early decision of the Hon'ble Apex Court which is the case of *Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another*, reported in **A.I.R. 1960 SC 941**. Since these nuggets of wisdom laid down by the Hon'ble Apex Court gets lost in the pages of history and, therefore, only to refresh the memory of the litigants and the lawyers, the Court gets tempted to reproduce certain paragraphs of the said decision so that the basic principles which have been well enunciated by the highest Court of the land does not get diluted by successive orders or decisions :

“7. The principle of res judicata is based on the need of giving a finality of judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or an a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in s. 11 of the Code of Civil Procedure; but even where s. 11 does not apply, the principle of res judicata



has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?

9. Dealing with this question almost a century ago the Privy Council in Maharaja Moheshur Singh v. The Bengal Government (1850) 7 M.I.A. 283 held that it is open to the appellate court which had not earlier considered the matter to investigate in an appeal from the final decision grievances of a party in respect of an interlocutory order. That case referred to the question of assessment of revenue on lands. On December 6, 1841, judgment was pronounced by the Special Commissioner to the effect that 3,513 beeghas of land alone were assessable, and that the collections made by the Government on the other



lands should be restored to the possessors. This judgment was affirmed by another Special Commissioner on March 8, 1842. On September 21, 1847, a petition for review on behalf of the Government of Bengal was presented to another Special Commissioner. That petition for review was granted. After due hearing the judgment of March 8, 1842, was reversed. The question arose before the Privy Council whether the review had been granted in conformity with the Regulations existing at that time with respect to the granting a review. It was urged however on behalf of the Government of Bengal that it was then too late to impugn the regularity of the proceeding to grant the review and that if the appellant deemed himself aggrieved by it, he ought to have appealed at the time, and that it was too late to do so after a decision had been pronounced against him.

10. Dealing with this objection the Privy Council observed :

"We are of opinion that this objection cannot be sustained. We are not aware of any law or regulation prevailing in India which renders it imperative upon the suitor to appeal from every interlocutory order by which he may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting for ever the benefit of the consideration of the appellate court. No authority or precedent has been cited in support of such a proposition, and we cannot conceive



that anything would be more detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon the suitor the necessity of so appealing; whereby on the one hand he might be harassed with endless expense and delay, and on the other inflict upon his opponent similar calamities. We believe there have been very many cases before this Tribunal in which their Lordships have deemed it to be their duty to correct erroneous interlocutory orders, though not brought under their consideration until the whole cause had been decided, and brought hither by appeal for adjudication."

11. This view was re-affirmed by the Privy Council in *Forbes v. Ameeroonissa Begum* (1865) 10 M.I.A. 340 A decree for possession with mesne profits having been made against the defendant by the Civil Judge, Purneeha, on December 18, 1834, the defendant appealed to the Sadar Diwani Adalat. That Court by its order dated January 22, 1857, held that the Civil Judge had been wrong in decreeing the mesne profits and further that the plaintiff was bound before he was entitled to have his conditional sale made absolute to render certain accounts. Accordingly the Sadar Diwani Adalat remanded the case in order that the judge might call upon the plaintiff for his accounts and then decide the case in the light of the remarks made by the Adalat. After the case went back the plaintiff produced accounts but



the judge held that they were insufficient and dismissed the suit. An appeal was taken against that decree of dismissal to the Sadar Diwani Adalat but the appeal was unsuccessful; a later prayer for review was also rejected. On behalf of the appellant it was contended before the Privy Council that the Sadar Diwani Adalat was wrong in requiring the appellant to produce his accounts. In order however that this question could be raised, it was necessary to decide, whether if the Sadar Diwani Adalat was wrong in remanding the case for re-trial, the appellant was bound by that decree he not having appealed therefrom. Their Lordships of the Privy Council pointed out that the order of remand was an interlocutory order and that it did not purport to dispose of the case and consequently upon the principle laid down by the Privy Council in *Moheshur Singh v. The Government of Bengal* (supra), the appellant was not precluded from insisting that the remand for the production of the accounts was erroneous or that the cause should have been decided in his favour, notwithstanding the non-production of the accounts. Their Lordships also mentioned the fact that the learned judges of the Sadar Court also treated the latter point as still open to the appellant, when considering his appeal against the decree of dismissal passed after remand.

12. The principle laid down in *Moheshur Singh's Case* (supra) was also acted upon by the Privy Council in *Sheonath v. Ramnath* (1865) 10 M.I.A.



413 That litigation was commenced Ramnath by a suit in the Court of the Civil Judge, Lucknow, seeking a general account and partition. The plaint mentioned the execution of some releases described as (Farighkuttees) but alleged that there had been no partition as between the parties as stated in them, that the partition was intended to take effect after the settlement of accounts when the Farighkuttees were to have been registered and that in the meantime they had remained with the appellant as incomplete instruments. The Trial Judge held however that the Farighkuttees had been executed on the footing of actual partition and division of the joint property, that these had been executed without taint of fraud and dismissed the suit. An appeal was taken to the Judicial Commissioner; he affirmed the Civil Judge's decision on all points adding however that "there was one account between the parties still unadjusted, viz., the division of the outstandings which was left open at the time of the division of the assets." In this view he remanded the case to the Judge to decide what sum should be awarded to the plaintiff in satisfaction of all claims on this account and directed that if possible a decision should be obtained from the arbitrators previously appointed by the parties. After remand the Civil Judge referred the question involved to certain arbitrators but the defendant did not acquiesce in this order and petitioned the Judicial Commissioner against it, stating that he objected to the arbitrators to whom the Civil Judge had referred



the case, and requesting that other arbitrators might be appointed. This objection was overruled by the Judicial Commissioner, and the request was rejected. Ultimately two separate decrees were made by the Civil Judge, one on the 4th September as regards part of the claim and the other on 22nd December as regards another part. On appeal both these decrees were affirmed by the Judicial Commissioner. It was against this decision of the Judicial Commissioner that the defendant appealed to the Privy Council. Two points were raised before the Privy Council. The first was that it was not competent to the Judicial Commissioner except with the consent of both parties, to vary, as he did vary, by his order of May 15, 1862, the rights of the parties under the Farighkuttees and to impose on the defendant an obligation of purchasing the plaintiff's interests in the outstandings on a rough estimate of its value; the other point raised was that the nomination of the particular arbitrator by the Judge without the consent and against the repeated protests of the appellant was altogether irregular, and that the award was therefore not binding upon him. It has to be noticed that the defendant had not appealed against the Judicial Commissioner's order of May 15, 1862, nor had he appealed against the Judicial Commissioner's later order rejecting the defendant's petition that he objected to the arbitrators to whom the Civil Judge had referred the case and that other arbitrators might be selected by the parties. In spite of these facts the



Privy Council held that both these points were open to the appellant observing :

"That both points are open to the appellant, although he has in terms appealed only against the final decision of the Civil Judge and the confirmation of it by the Judicial Commissioner, is, we think, established by the case of Moheshur Singh v. The Government of Bengal. The appeal is, in effect, to set aside an Award which the appellant contends is not binding upon him. And in order to do this he was not bound to appeal against every interlocutory order which was a step in the procedure that led up to the Award."

13. There can be little doubt about the salutary effect of the rule as laid down in the above cases on the administration of justice. The very fact that in future litigation it will not be open to either of the parties to challenge the correctness of the decision on a matter finally decided in a past litigation makes it important that in the earlier litigation the decision must be final in the strict sense of the term. When a court has decided the matter it is certainly final as regards that court. Should it always be treated as final in later stages of the proceedings in a higher court which had not considered it at all merely on the ground that no appeal lay or no appeal was preferred ? As was pointed out by the Privy Council in Moheshur Singh's Case (supra) the effect of the rule that at



every stage of the litigation a decision not appealed from must be held to be finally decided even in respect of the superior courts, will put on every litigant against whom an interlocutory order is decided, the burden of running to the higher courts for redress of the grievances, even though it may very well be that though the interlocutory order is against him, the final order will be in his favour and so it may not be necessary for him to go to the appeal court at all. Apart from the inevitable delay in the progress of the litigation that such a rule would cause, the interests of the other party to the litigation would also generally suffer by such repeated recourse to the higher courts in respect of every interlocutory order alleged to have been wrongly made. It is in recognition of the importance of preventing this mischief that the Legislature included in the Code of Civil Procedure from the very beginning a provision that in an appeal from a decree it will be open to a party to challenge the correctness of any interlocutory order which had not been appealed from but which has affected the decision of the case.”

8. If this is what the Hon’ble Apex Court has had to say with regard to applicability of principles of *res judicata* even in matters of interlocutory orders, then there is no way the Tribunal’s decision to restore already dismissed restoration application a second



time over can be justified in law.

9. If the decision dated 05.05.2009 is held to be bad in law and against the settled principles, then obviously the consequential order on the merits passed on 15.06.2009 also cannot be sustained and for which the learned single Judge has also given the additional reasons thereof.

10. In totality therefore, the appeal has no merit and is required to be dismissed as no part of the order of the learned single Judge suffers from any infirmity which is required to be rectified in appeal.

11. Appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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