

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

A.S.NOs.910 AND 908 OF 2017

COMMON JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Both these appeals are preferred by the Bank of India against the judgment and decree passed by the I Additional Senior Civil Judge, Visakhapatnam in O.S.Nos.307 of 1979 and O.S.No.116 of 1981 dated 29.04.2016. While O.S.No.307 of 1979 was filed by the appellant-Bank for recovery of a sum of Rs.5,01,129.22 ps from the defendants based on an equitable mortgage, O.S.No.116 of 1981 was filed by the defendants in O.S.No.307 of 1979 seeking rendition of accounts by the Bank, and for payment of the balance amounts due to the plaintiffs with interest at 18% per annum; for eviction of the Bank from the plaint schedule premises occupied by them; for future damages for use and occupation or *mesne* profits from 01.03.1981 at the rate of Rs.12,000/- per month; and for subsequent interest, and for the costs of the Suit.

By the judgment and decree dated 29.04.2016, the Learned I Additional Senior Civil Judge, Visakhapatnam dismissed O.S.No.307 of 1979 filed by the Bank with costs holding that the defendant-landlords were entitled to get back their title deeds; the Suit in O.S.No.116 of 1981, filed by the landlord-defendants, was decreed with costs for recovery of a sum of Rs.16,85,046.10 ps from the Bank; the defendant-landlords were held entitled to claim rent at Rs.9,600/- per month from 31.03.1981 to 30.04.1985, and

for damages and *mesne* profits at Rs.12,000/- per month, from 01.05.1985 till the date of vacating the premises, with interest at 12% per annum computed for each month on which the rent or damages, as the case may be, is due till the date of realization, upon payment of court fee on *mesne* profits; the defendant-landlords were also held entitled to claim subsequent interest on Rs.5,57,770.78 ps @ 12% per annum till the date of realisation; and Rs.5,00,000/- towards damages with interest thereon @ 12% per annum till the date of realisation. The defendant-landlords were directed to pay deficit court fee of Rs.7,830.46 ps, failing which they were held not entitled to execute the decree; and they were directed to give credit for the amount which the tenant-Bank had already deposited, and which was received by them from the Court on the earlier occasion.

While A.S.No.910 of 2017 is filed against the judgment and decree in O.S.No.307 of 1979, A.S.No.908 of 2017 is filed against the judgment and decree in O.S.No.116 of 1981. Both the Suits, in O.S.No.307 of 1979 and O.S.No.116 of 1981, were instituted long before Section 17(1)(ii)(a) of the A.P. Civil Courts Act, 1972 ("the Act" for brevity) was amended, and the words Rs.10,00,000/- was substituted for Rs.5,00,000/- by Act 8 of 2015 with effect from 24.04.2015. Both the Suits, instituted prior to the amendment of Section 17 of the Act, were pending on the date of the amendment, and were dismissed/decreed only thereafter on 29.04.2016.

Sri O.Manohar Reddy, learned counsel for the respondent, would contend that the appeals, as filed before this Court, are not maintainable as the proper forum, for preferring an appeal against the order of the learned Additional Senior Civil Judge, is the

District Court. It is necessary for us therefore to examine, in the first instance, whether the appeals filed before us are maintainable.

Section 17 (1)(ii) of the Act, after its amendment by Act 8 of 2015 with effect from 24.04.2015, reads thus.

“An appeal shall, when it is allowed by law, lie from any decree or order in a civil Suit or proceeding of the Court of the Senior Civil Judge (a) to the District Court, when the amount or value of the subject matter of the Suit or proceeding is not more than Rs.10,00,000/-; (b) to the High Court in other cases.”

It is only if the value of the subject matter of the Suit or proceedings is not more than Rs.10,00,000/-, would an appeal lie from the Court of the Senior Civil Judge to the District Court; and in cases where the amount or value, of the subject matter of the Suit or proceeding, exceeds Rs.10,00,000/- then an appeal would lie to the High Court. While the appeal in A.S.No.910 of 2017 is valued at Rs.26,91,063/-, and the appeal in A.S.No.908 of 2017 is valued at Rs.41,26,217/-, it is relevant to note that O.S.No.116 of 1981, against which A.S.No.908 of 2017 was preferred, was valued at Rs.1,53,000/-; and O.S.No.307 of 1979, against which A.S.No.910 of 2017 was filed, was valued at Rs.5,01,129.22 ps., both of which are far below Rs.10,00,000/- stipulated in clause (ii)(a) of Section 17(1) of the Act. Consequently, as Section 17(1)(ii)(a) of the Act prescribes the appellate forum, against the judgment and decree of the Court of the Senior Civil Judge, to be the District Court when the amount or value of the subject matter of the Suit is not more than Rs.10,00,000/-, it is the value of the Suit which is required to be taken into consideration in determining the appellate forum, and not the value of the appeal. As the value of both the Suits, in O.S.No.307 of 1979 and

O.S.No.116 of 1981, are far below Rs.10,00,000/-, an appeal would lie against the judgment and decree passed by the Court of the Senior Civil Judge only to the District Court and not to the High Court.

Smt. T.Vidya Rani, learned counsel for the appellant, would however contend that, since the Suits in O.S.Nos.307 of 1979 and 116 of 1981 were instituted prior to the amendment of Section 17(1)(ii)(a) of the Act, by Act 8 of 2015 with effect from 24.04.2015, it is the pre-amended provision which would apply; and since the value prescribed under Section 17(1)(ii)(a) of the Act, prior thereto, was “not more than Rs.5,00,000/-“, and as the value of the Suit in O.S.No.307 of 1979 was Rs.5,01,129.22 ps, which is more than Rs.5,00,000/-, an appeal would lie only to the High Court under Section 17(1)(ii)(b) of the Act; and as a common judgment was passed in both the Suits, the appeal in A.S.No.908 of 2017 would also be required to be heard only by the High Court.

The question which necessitates examination, therefore, is whether, for the purpose of deciding the proper appellate forum, the amended provisions of Act 8 of 2015, which came into force with effect from 24.04.2015, would apply to Suits which were instituted and decreed prior thereto, or whether they would apply to Suits instituted prior thereto but were pending as on date, and were decreed only after the amended provision came into force. Smt. T.Vidya Rani, learned counsel for the appellant, would place reliance on a Division Bench judgment of this Court in **K.Hara Gopal v. K.Venkata Ratna Kumar**¹ wherein it was held that the Suit instituted prior to the amendment act would be governed by

¹ 1993(1) ALT 482 (D.B.)

the provisions of the pre-amended Act, and not by the provisions of the amended Act.

In **K.Hara Gopal**¹, the Suit was filed on 23.04.1983 before Amending Act 19 of 1984 came into force on 21.05.1984. The Suit was, however, decreed long after the Amendment Act came into force on 21.08.1990. If the law declared by the Division Bench in **K.Hara Gopal**¹ were held to apply, then the submission of Smt. T.Vidya Rani, learned counsel for the appellant, that an appeal would lie only to this Court, and not to the District Court would necessitate acceptance. The fact, however, remains that the correctness of the Division Bench judgment in **K.Hara Gopal**¹ was doubted, and the matter was referred to a Full Bench of this Court. In **Motichand Jain v. Jaikumar M**², a Full Bench of this Court overruled the Division Bench judgment in **K.Hara Gopal**¹ and held that, while the right of appeal was a substantive right, the right, regarding the forum before which an appeal should be filed, was within the realm of adjectival law being procedural in nature; and was, therefore, not a vested right. The Full Bench held that the A.P. Civil Courts (Amendment) Act 30 of 1989, under which the pecuniary jurisdiction of the Chief Judge, City Civil Court/District Court had been raised from Rs.30,000/- to Rs.1,00,000/- operated retrospectively since nothing was discernible from the provisions of the said Act that it operated prospectively. As a result of the law declared by the Full Bench, in **Motichand Jain**², the appeals which were already filed had to be returned to be presented before the Court which had the pecuniary jurisdiction under the amended Act 30 of 1989.

² 2004(1) ALT 250 (F.B.)

The correctness of the Full Bench judgment in **Motichand Jain²** was doubted, and the matter was referred to a Larger Bench of five Judges of this Court in **Vallabhaneni Lakshmana Swamy v. Valluru Basavaiah³** which observed thus:-

“Therefore, we reached the following conclusions:

- (1) **That the Civil Courts (Amendment) Act, 20 of 1989 is applicable prospectively from 01.12.1989.**
- (2) **Even in case of Suits which were filed earlier to the amendment and they are pending disposal as on the date of the amendment came into force, the appeal if any has to be necessarily filed before the Forum created under the amended Act depending on the pecuniary limits. To this limited extent, the decision in *Kotina Papayya v. Samminga Appalanaidu's* case {1960(1) An.W.R. 100 (D.B.)} and *S.Kameshwaramma v. M/s. Radhakrishna and Company's* case {1974(2) An.W.R.280 = AIR 1975 A.P. 65 (D.B.)} and *K.Hara Gopal¹'s* case stand modified.**
- (3) **Any appeal having been presented before date of amended Act coming into force and the appeals pending as on the said date are required to be disposed of by the Courts, wherever they were pending and the amendment will not have any effect on pending appeals either presented or pending.**
- (4) **The Suits or petitions in which decrees were passed prior to 01.12.1989, they will be dealt with in accordance with the pre-amended procedure.**
- (5) In the cases before us, even after the amendment came into force on 01.12.1989, number of appeals having value less than Rs.one/3 lakhs were admitted by this Court and some of them were disposed of by virtue of the judgment of the Division Bench in **Kameshwaramma's** case subsequent cases though in fact they do not fall within the category of either pending appeals or appeals presented, before the amendment. The pecuniary limits and forum go together and the amendment being prospective in operation, the appeals ought to have been filed before the amended forum. But, taking into consideration that large number of appeals were already admitted by this Court, and they are pending for a considerable length of time and keeping in view the maxim that “*Actus curiae neminem gravabit*” (an act of the

³ 2004(5) ALT 755 (L.B.)

Court shall prejudice no man), we declare that such of the cases which were filed subsequent to amendment are deemed to have been transferred to this Court under Section 24 of the Code of Civil Procedure for their disposal in accordance with law.”

(emphasis supplied)

In the light of the law declared by the Larger Bench in **Vallabhaneni Lakshmana Swamy**³, appeals, against Suits filed prior to the amendment, and which were pending on the date the amendment came into force, would lie only to the forum, created under the amended Act, which had pecuniary jurisdiction to entertain the appeals; an appeal presented before the date the amended Act came into force, and which was pending as on the said date, was required to be disposed of by the Court wherever they were pending, and the amendment would not have any effect on pending appeals either presented or pending; and Suits or petitions, in which decrees were passed prior to the amendment of the Act, would be dealt with in accordance with the pre-amended procedure. To the limited extent, it held that the amended provisions would apply even to the appeals pending on the date of amendment of the Act, the Full Bench judgment in **Motichand Jain**² was overruled.

In the light of the law declared by the Larger Bench in **Vallabhaneni Lakshmana Swamy**³, appeals, against judgments and decrees passed in Suits which were pending adjudication on the date the amended Act came into force, would be governed by the provisions of the amended Act, and an appeal would lie only to the Court which, in terms of the amended Act, had pecuniary jurisdiction to hear the appeals. While both the Suits were filed in the years 1979 and 1981, long prior to 24.04.2015 when the

amendment Act 8 of 2015 came into force, both the Suits were dismissed/decreed only thereafter on 29.04.2016. Consequently, the amended Act 8 of 2015 would apply and, since the value of the Suit in O.S.No.307 of 1979 (against which A.S.No.910 of 2017 is filed) is only Rs.5,01,129.22 ps which is far below the pecuniary limit of Rs.10,00,000/-, an appeal would lie only to the District Court, and not to the High Court. Since the appeal against O.S.No.307 of 1979 is required to be presented only before the District Court, the appeal against O.S.No.116 of 1981 must also be presented before the District Court, since both the appeals arise against a common judgment.

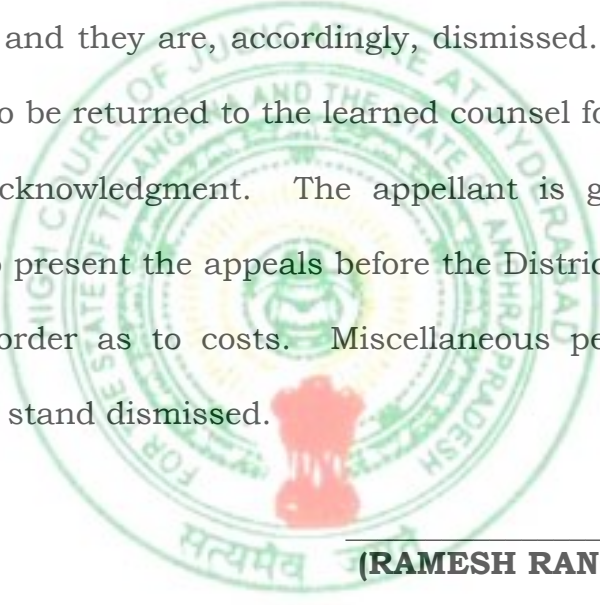
Smt. T.Vidya Rani, learned counsel for the appellant, would however placed reliance on another Larger Bench judgment of this Court, in **Ramvilas Bajaj v. Ashok Kumar**⁴, in support of her submission that the right of a forum is also a vested right; consequently, such a right vested in the appellant on the date of institution of the Suit in the year 1979; and since the pecuniary jurisdiction of a District Court, prior to Act 8 of 2015, was Rs.5,00,000/- and the value of the Suit in O.S.No.307 of 1979 was more than Rs.5,00,000/-, an appeal would lie only to the High Court and not to the District Court. We must express our inability to agree.

The question which fell for consideration before the Larger Bench in **Ramvilas Bajaj**⁴, was whether Section 32(c) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, as amended by Section 3 of Amendment Act 7 of 2005, would effect cases pending on the date the said Act came into force. In the

⁴ 2007(4) ALT 348 (L.B.)

present case, we are not concerned with the effect of the amendment on the pendency of a Suit, but with the question whether an appeal would lie to the forum which has the pecuniary jurisdiction, under the amended Act, to entertain an appeal against such Suits. The Larger Bench judgment, in **Ramvilas Bajaj⁴**, has therefore no application to the facts of the present case.

The objection to the maintainability of the appeal is upheld. Registry shall return the original copy of the judgment and decree to the learned counsel for the appellant, for its presentation before the appropriate District Court. Both the appeals are not maintainable and they are, accordingly, dismissed. The Court fee paid shall also be returned to the learned counsel for the appellant under due acknowledgment. The appellant is granted two (2) weeks time to present the appeals before the District Court. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.



(**RAMESH RANGANATHAN, J**)

(**N.BALAYOGI, J**)

2nd August 2018
RRB