

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4021 of 2019

E.S.Sundara Mahalingam ... Appellant

vs.

1.The Special Tribunal for Co-operative Cases  
(District Judge)  
Tirunelveli.

2.The Deputy Registrar of Co-operative Societies,  
Cheramadevi,  
Tirunelveli District.

3.The Administrator,  
Valliyur co-operative Primary Agricultural  
and Rural Development Bank,  
D.R.L. (E) II, Panagui,  
Tirunelveli District.

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 15.02.2019 passed in W.P.No.12727 of 2003 on the file of this Court.

Prayer in W.P.No.12727 of 2003:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorri, calling for the entire records in connection with the order of the second respondent made in his proceedings E.Po.Na.Ka,No.15/1998-99 dated 21.06.2019 as confirmed by the Judgment and decree dated 20.02.2003 made in CMA(CS)No.109/1999 on the file of the first respondent and to quash the same.

For Appellant

: Mr.R.Sreedhar

For Respondents

: Mr.L.P.Shanmugasundaram  
Spl. G.P. (Co-op.)  
for respondent Nos.2 and 3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant.

2. We called upon learned counsel for the appellant to assist the Court on the legal issue with regard to the maintainability of this appeal keeping in view the fact that the impugned judgment of the learned Single Judge arises out of the dismissal of the writ petition that had questioned the order of the Special Tribunal for Co-operative cases headed by the learned District Judge in exercise of powers under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. The order dated 18.11.2019 passed by us C.M.P.No.24193 of 2019 in W.A.No. SR 132084 of 2019 is extracted herein under:

"This appeal arises out of the judgment of the learned Single Judge, whereby the learned Single Judge has dismissed the writ petition filed against the order of Co-operative Tribunal constituted under the Tamil Nadu Co-operative Societies Act, 1983, exercising powers under Section 152 thereof.

2. Prima facie, in our opinion, even though writ petition may have been captioned as a petition under Article 226 of the Constitution of India praying for Writ of Certiorari, yet a writ petition, if questioning the order of Tribunal arising out of the proceedings under a State Act, would be entertainable under Article 227 of the Constitution of India. In the given circumstances, if the writ petition would be maintainable under Article 227 of the Constitution of India, then writ appeal against the same under Letters Patent would not be entertainable by a Division Bench.

3. Learned counsel for the appellant prays that since the learned Single Judge has not gone into this issue, he may be granted time till 22.11.2019 to assist this proposition.

Put up on 22.11.2019, as prayed for."

3. Learned counsel for the appellant today submits that the Special Tribunal being a Tribunal within the meaning of Article 227(1) of the Constitution of India, a learned Single Judge of this Court, has already held that petition under Article 227 of the Constitution of India would be maintainable. The judgment dated 11.10.2019 in the case of T.Rengarajan v. V.Ramachandran and others [C.R.P.(MD) No.609 of 2017] has been placed before us.

4. We had also invited the attention of the learned counsel to the Division Bench judgment of Patna High Court in the case of Vijayanand Puri v. Deorani Devi and another, reported in 2019 SCC OnLine Patna 1808, whereunder taking notice of the judgment of the Supreme Court in the case of Rupa Ashok Hurrah v. Ashok Hurra, (2002) 4 SCC 388 and the view taken in Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675, that was later on overruled in the decision of Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423, the following view was expressed in paragraphs 26 to 36, which are extracted herein under:

"26. After having glossed over the decisions referred to above, we are of the considered opinion that by now the law has concretized that there are manifold differences between Articles 226 and 227 of the Constitution of India and one of the parameters to test whether an order has been passed under Articles 226 or 227 is that under Article 226, a High Court can annul or quash an order or proceeding but under Article 227, a High Court can, apart from annulling a proceeding in question, can also lay down the boundaries within which the inferior court is supposed to exercise its jurisdiction in order to rectify any error of law and fact apparent on the face of the record (also refer to Hari Vishnu Kamath vs. Syed Ahmad Ishaque, AIR 1955 SC 233 ).

27. In Lokmat Newspapers Pvt. Ltd. vs. Shankar Prasad (1999) 6 SCC 275, the Supreme Court had the occasion to identify whether a writ petition filed by the respondent was under Articles 226 or 227 and whether an appeal was maintainable against an order passed by the writ court. In the aforesaid case, the respondent who was a Foreman in the Composing Department of the appellant, was terminated from service. A complaint was filed by the respondent before the Labour Court alleging that the appellant had indulged in unfair labour practice. The aforesaid complaint of the respondent was dismissed by the Labour Court and the revision against the aforesaid dismissal of complaint was also dismissed

by the Industrial Tribunal, Nagpur. The respondent thereafter preferred a writ petition under Articles 226 and 227, challenging the decisions rendered by both the courts below. The writ petition also was rejected by the Single Judge. Thereafter, LPA was filed before the Division Bench of the High Court of Nagpur which reversed the orders of the courts below by holding that the appellant had engaged in unfair labour practice. This order of the Division Bench in Letters Patent Appeal was challenged under Article 136 of the Constitution of India before the Supreme Court by the management/appellant.

28. One of the major contentions of the appellant was that the Single Judge of the High Court had passed an order under Article 227 and hence the order was not amenable to an intra Court appeal of Letters Patent. In support of the aforesaid contention, attention was invited to the relevant averments in the writ petition as well as the order of the learned Single Judge. On the issue of maintainability, the Supreme Court referred to the various paragraphs of the writ petition and found that the respondent had invoked the jurisdiction of the High Court both under Articles 226 and 227 and had tried to make out a case for the High Court's interference, seeking issuance of an appropriate writ of certiorari under Article 226. The order of the learned Single Judge nowhere stated that the court was considering the writ petition under Article 226 and the writ was dismissed by observing that the courts below had appreciated the contentions and rejected the complaint. The Supreme Court did not therefore accept the view that the learned Single Judge had passed an order under Article 227 of the Constitution. Reliance was placed by the Supreme Court on a decision in Umaji Keshao Meshram vs. Radhikabai 1986 Supp SCC 401 where the same question was urged and answered as follows:

"107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that

rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass and Barham Dutt v. Peoples' Coop. Transport Society Ltd. and we are in agreement with it."

29. It was therefore held that once a jurisdiction was invoked under Articles 226 and 227 and the writ petition was dismissed on merits, it could not be said that power was exercised only under Article 227. The consideration on such issue would depend upon the relevant averment made in the writ petition, the nature of jurisdiction invoked by the writ petitioner and the nature of order passed by the learned Single Judge.

30. A Division Bench of this Court in Heera Chand Swarnkar @ Heera Chandra Swarnkar vs. Sri Radhe Shyam Jee Maharaj Virajman through Pradeep Kumar & Anr. 2016 (1) PLJR 489 has held as follows:

"24. What nomenclature has been used by a party, while seeking intervention by Court is not so material as the contents of the order, which is challenged, as well as the contents of the order, which has been passed by the High Court. [See State of M.P. vs. Visan Kumar Shiv Charan Lal, reported in (2008) 15 SCC 233].

25. If the judgment under appeal falls squarely within four corners of Article 227 of the Constitution of India, it goes without saying that intra-Court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226 of the Constitution of India, although Article 227 of the Constitution of India is also mentioned, and, principally, the judgment appealed against falls under Article 226 of the Constitution of India, appeal would be maintainable.

26. What is important to be ascertained is, therefore, the true nature of the order passed by the Single Judge and not what provision he mentions, while exercising such powers. [See Ashok K. Jha vs. Garden Silk Mills Ltd., reported in (2009) 10 SCC 584].

27. In Ramesh Chandra Sankla vs. Vikram Cement, reported in (2008) 14 SCC 58, the Supreme Court has held that a statement, made by a learned Single Judge, that he has exercised power under Article 227 of the Constitution of India, cannot take away right of appeal against such a judgment if power is, otherwise, found to have been exercised under Article 226 of the Constitution of India.

28. Clarified the Supreme Court, in MMTC vs. CCT, reported in, (2009) 1 SCC 8, that a High Court shall consider the nature of the controversy, the nature of relief, which is sought for, and the nature of the order, which might have been passed by a Single Judge of the High Court in order to decide if the order has been made under Article 226 or 227 of the Constitution of India."

31. Now applying the aforesaid principles to the facts of the present case, it appears that even though the writ petition has been filed under Article 227 but the averments made in the writ petition clearly make out that a writ of certiorari was invoked by the respondent-plaintiff. In the entire order of the learned single Judge, there is

no reference of any exercise of power under Article 227. The tenor of the order clearly reflects that a writ of certiorari was issued and the order passed by the trial court in allowing the petition under Order XVIII Rule 17 of the appellant was annulled. No further direction was given by the learned single Judge nor the boundaries of the exercise of jurisdiction was laid down. It would also be relevant to note that under Order XVIII Rule 17, a court may, at any stage of suit, recall any witness who has been examined and may put such questions to him as the court thinks fit. The purpose of the rule is to enable the court, while trying a suit to clarify any doubt which it may have with regard to the evidence led by the parties. The said provision is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. The power under Order XVIII Rule 17 is to be sparingly exercised and in appropriate cases and not as a general rule (also refer to Vadiraj Nagappa Vernekar vs. Sharadchandra Prabhakar Gogate, 2009 (4) SCC 410).

32. The learned Single Judge has exercised his discretion and annulled the order of the trial court on the ground that the documents which were allowed to be produced and proved by the appellant-defendant were of no relevance in the suit which was being tried and that it was attempted to be produced at a much belated stage, when the case was fixed for delivery of judgment. The jurisdiction of the trial court trying the suit to entertain such application by the appellant-defendant was under doubt. Courts have to consistently endeavour to follow a time schedule but in the present case, the trial court, for no apparent good reason, acceded to the request of the appellant which primarily appeared to be aimed at delaying the conclusion of the trial of the suit.

33. Hence, even though the petition was filed under Article 227 of the Constitution of India, the learned Single Judge appears to have exercised the powers under Article 226 of the Constitution.

34. In that event, we hold that the present appeal is maintainable.

35. Now the irresistible conclusion which we are driven to is that the learned Single Judge issued a writ of certiorari to correct a judicial order which is not permissible and therefore does not stand the scrutiny of procedural law.

36. The same is therefore set aside in view of the law declared in Radhey Shyam and Another vs. Chhabi Nath. With Jagdish Prasad vs. Iqbal Kaur and Others reported in 2015 (5) SCC 423."

5. Applying the ratio of the decisions referred to above, in the present case, there is no doubt that the order was passed by the Special Tribunal Chaired by the learned District Judge and therefore, a writ petition under Article 226 of the Constitution could not have been maintained. The writ petition has, however, been dismissed. Thus, had the writ petition been allowed, an appeal would have been preferred and we could have set aside the judgment following the ratio as explained in the case of Vijayanand Puri (supra). But the fact remains that the decision that was under challenge before the learned Single Judge was admittedly that of a Tribunal. The jurisdiction of this Court therefore which could be exercised was under Article 227 of the Constitution and the petition could have been treated to be that under Article 227 only. But the aforesaid issue does not appear to have been dealt with by the learned Single Judge. Since we are of the opinion on the facts of this case that the writ petition filed under any caption whatsoever, was against the order of the Tribunal, it is the learned Single Judge who could and should have treated the petition under Article 227 of the Constitution of India.

6. Having said so, the present writ appeal against the jurisdiction exercised under Article 227 would not be maintainable. In the light of the above, we do hold that this appeal is not maintainable, but at the same time, we grant liberty to the appellant to move a Review Application before the learned Single Judge for considering the case in the light of what has been stated herein above.

7. The appeal is consigned to records with the said observations. No costs. Consequently, C.M.P.No.25210 of 2019 is closed.

Sd/-  
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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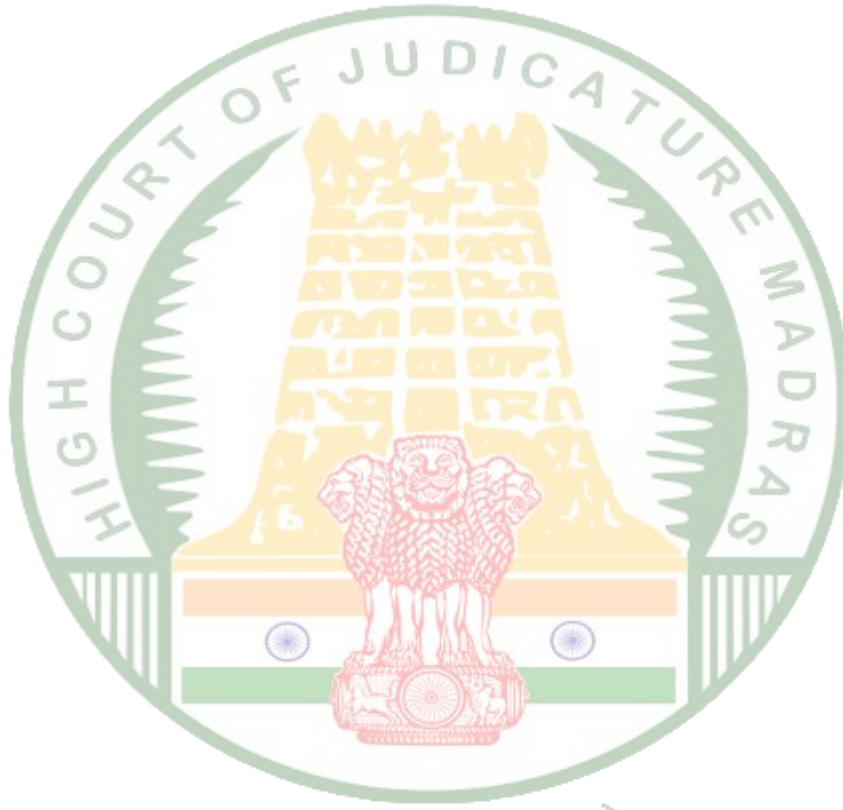
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+1cc to Mr.L.P.Shanmugasundaram, Advocate, SR.No.98525.  
+1cc to Government Pleader, SR.No.98977.  
+1cc to Mr.R.Sreedhar, Advocate, SR.No.97508.

W.A.No.4021 of 2019

LN(CO)  
CSR: 06/01/2020  
CSR: 03.03.2020

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