

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

% **Date of decision: 12th April, 2021**

+ **LPA 141/2021**

CENTRE FOR DEVELOPMENT OF TELEMATICS

.....Appellant

Through: Mr. Pragyan Sharma with Mr. Sandeep Chatterjee & Mr. Anurag Mehta, Advocates with Ms. Akshita Gupta, Legal Associate of CDOT.

Versus

RAJIV BHASIN & ANR.

..... Respondents

Through: Mr. Siddharth Yadav, Senior Advocate with Mr. Wasim Ashraf, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM APPL. 13680/2021 (for exemption)

1. Allowed, subject to all just exceptions and as per extant rules.
2. The application stands disposed of.

LPA 141/2021

3. This *intra* Court appeal impugns the order dated 4th March, 2021 in W.P.(C) 4808/2019, clarifying, at the instance of the respondent No. 1, the earlier judgment dated 13th May, 2019 disposing of the said writ petition.

4. The submission of the counsel for the appellant is, that (i) the respondent No. 1, after the disposal of W.P.(C) 4808/2019 vide judgment dated 13th May, 2019 aforesaid, filed another writ petition namely W.P.(C) No. 7590/2020 and of which notice was issued; (ii) the appellant, in the reply to W.P.(C) 7590/2020, *inter alia* took the plea of *res judicata*, with reference to the judgment dated 13th May, 2019 aforesaid; and (iii) upon the appellant so taking the plea of *res judicata/constructive res judicata* in its reply to W.P.(C) No. 7590/2020, the respondent No. 1 filed C.M. APPL. No. 1965/2021 in W.P.(C) 4808/2019, seeking clarification of the judgment dated 13th May, 2019 aforesaid and which application has been allowed vide the impugned order dated 4th March, 2021 and the effect whereof is to take away the plea of *res judicata/constructive res judicata* taken by the appellant in its reply to W.P.(C) No. 7590/2020.

5. The counsel for the respondent No. 1 appears on advance notice and we have heard the counsel for the appellant and the senior counsel for the respondent No. 1, finally on the appeal, at this stage itself.

6. Our understanding of law is, that when a plea of *res judicata/constructive res judicata* is taken, the said plea has to be decided in the proceedings in which the same has been taken and not by approaching the Court, with reference to order whereof or proceedings before which, the plea of *res judicata/constructive res judicata* is taken, for clarification of its order i.e. whether it decided and/or did not decide the plea, which in the subsequent proceedings is pleaded to be barred by principles of *res judicata/constructive res judicata*. The position would however be different, where the Court in the subsequent proceeding, in which the said

plea is taken, feels the need for either party to approach the Court of the earlier proceedings, for clarification.

7. We have thus enquired from the counsel for the appellant, whether there is any order in W.P.(C) No. 7590/2020, in which the Judge seized of the writ petition has expressed a need for clarification to be obtained *qua* the order /judgment of the earlier Court, with reference whereto the plea of *res judicata/ constructive res judicata* is taken.

8. The counsel for the appellant states that there is none.

9. The senior counsel for the respondent No. 1, opposing the appeal, has firstly taken a plea of the very maintainability thereof. It is argued that the appeal is in the teeth of ***Shah Babulal Khimji Vs. Jayaben D. Kania*** (1981) 4 SCC 8, since the impugned order dated 4th March, 2021 clarifying the earlier judgment dated 13th May, 2019 in W.P.(C) 4808/2019 does not constitute a judgment. Secondly, on merits it is contended that there is indeed an order dated 21st December, 2020 in the subsequent writ petition being W.P.(C) 7590/2020, where the Judge seized thereof has expressed the need for a clarification.

10. We have considered both the contentions aforesaid. Once it is not controverted that the jurisdiction to decide the plea of the *res judicata/ constructive res judicata* is of the Court in which the said plea is taken and not of the Court on the basis of the judgment whereof the said plea is taken, any exercise of power in contravention to the said principle would be in excess of the powers vested in the Court and such exercise of powers would invite interference in Letters Patent jurisdiction. The effect of the impugned

order is of nullifying the plea of *res judicata/constructive res judicata* taken by the appellant in W.P.(C) 7590/2020; the impugned order does indeed affect the rights of the appellant and would be a judgment within the meaning of ***Shah Babulal Khimji*** supra also. No merit is thus found in the preliminary objection of the respondent No. 1 to the maintainability of the appeal.

11. Though the order dated 21st December, 2020 in W.P.(C) No.7590/2020 has not been filed by the appellant but the counsel for the appellant has screen-shared the same with us and on a perusal thereof we find that vide the said order, only the notice of the writ petition was issued and there is no need expressed by the Judge therein, for any clarification to be obtained.

12. The appeal thus succeeds and is allowed and the order dated 4th March, 2021 in WP(C) No. 4808/2019 is set aside. We, however, clarify that it will be open to the parties to address arguments during the hearing of W.P.(C) 7590/2020 on, whether the challenge by the respondent No.1 or any part thereof, in W.P.(C) 7590/2020 is barred by the principles of *res judicata* or *constructive res judicata*.

13. The appeal is disposed of.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

APRIL 12, 2021

sr/ak