

8
sandip
Ct. 18
19.07.2022

C.O. No. 3578 of 2018

Sankar Kadambanshi
Vs.
Smt. Rekha Kadambanshi & Ors.

Mr. Tanmoy Mukherjee,
Mr. Kajal Baran Ray,
Mr. Souvik Das,
Mr. Rudranil Das ... For the petitioner.

Mr. Tanmoy Chowdhury,
Ms. Ritoprita Ghosh ... For the O.P. No. 1.

The instant revisional application is at the instance of the defendant no. 1 in a suit for declaration and is directed against Order No. 24 dated September 07, 2018 passed by the 2nd Court of learned Civil Judge (Junior Division) at Serampore, District – Hooghly in the said suit being Title Suit No. 441 of 2016.

The petitioner in the said suit filed an application under Order VII Rule 11 of the Code of Civil Procedure praying rejection of the plaint of the said suit alleging that it discloses no cause of action and the jurisdiction of the Civil Court to entertain the said suit is barred under Section 28 of the Central Administrative Tribunal Act, 1985 (hereinafter referred to as 'the said Act of 1985' in short).

The learned Trial Judge by the order impugned has dismissed the said application holding that an order of injunction of whatsoever nature, be it temporary or permanent restraining the defendant from withdrawing his retirement benefits from his working place do not come within the purview of the said Act of 1985.

In the connected suit the plaintiff, the opposite party no. 1 herein, *inter alia*, has prayed for the following reliefs :-

“That the Plaintiff therefore prays :-

- i) For a Decree declaring that the Plaintiff is the legally married wife of Sri Sankar Kadambanshi;*
- ii) For a Decree upon such declaration restraining the Defendant No. 1 from withdrawing the entire Retirement service benefits of Sankar Kadambanshi from his working place at National Library, Kolkata, which is morefully described in the Schedule ‘A’ hereunder by passing an order of Injunction against the Defendant No. 1;*
- iii) Cost of the suit against the Defendants;*
- iv) To any other relief or reliefs, claim or claims to which the plaintiff is entitled to in law and equity.”*

The factum of subsistence of a valid marriage between the plaintiff and the defendant no. 1 is not in dispute, the plaintiff therefore has no cause of action to file a suit to get a relief prayed for in the suit as the first relief.

The service matters have been defined under Section 2 (q) of the said Act of 1985, the said provision is quoted below for ready reference:-

“2 (q) *‘service matters’, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-*

- (i) remuneration (including allowances), pension and other retirement benefits;*
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;*
- (iii) leave of any kind;*
- (iv) disciplinary matters; or*

(v) any other matter whatsoever;

The retirement benefits of the petitioner are coming within the aforesaid definition of service matters.

The Central Administrative Tribunal in terms of Section 14 of the said Act of 1985 has the exclusive jurisdiction in relation to such service matters and by virtue of Section 28 thereof the jurisdiction of the Civil Court in relation to said service matters has been expressly excluded.

For the sake of brevity the said Section 28 of the said Act of 1985 is quoted below :-

“28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution-

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service of post. [no court except –

(a) The Supreme Court; or

(b) any industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force;

shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.”

The order impugned for the aforesaid reasons is not sustainable and is accordingly set aside and in

consequence thereof, the plaint of **Title Suit No. 441 of 2016 (Smt. Rekha Kadambanshi Vs. Sri Sankar Kadambanshi & Ors.)** pending before the 2nd Court of learned Civil Judge (Junior Division) at Serampore, District – Hooghly is rejected.

C.O. 3578 of 2018 is disposed of with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)