CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

Civil Appellate Jurisdiction
Appellate Side

CAN 1 of 2019
in
MAT 61 of 2019

Smt. Mamata Sarki & Anr.

-Vs.-

The State of West Bengal & Ors.

Before: Hon'ble Justice Arijit Banerjee
&
Hon'ble Justice Abhijit Gangopadhyay

For the appellants	:	Mr. Amales Roy, Adv. Ms. Suman Sehanabish, Adv.
For the Respondent No.6	:	Mr. Jagriti Mishra, Adv. Mr. Debojit Kundu, Adv. Mr. Subhankar Dutta, Adv.
For the State	:	Mr. Debabrata Dhar (AGP) Ms. Paramita Sahu, Adv.
Heard On	:	19.02.2020 & 20.02.2020
CAV on	:	20.02.2020
Judgment On	:	19.03.2020

Arijit Banerjee, J.:-

1. A short but important question of law falls for determination in this appeal directed against the judgement and order dated 11 December, 2019 passed by a learned Single Judge in W.P.A. No. 1033 of 2019.

2. The question is whether Section 16 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the 'said Act') confers a right of appeal against an order of the Maintenance Tribunal constituted under Section 7 of the Act only on senior citizens and parents, to the exclusion of children and relatives as defined in Section 2 of the said Act.

3. The appellant No.1 is the daughter-in-law of the respondent no.6. The appellant no.2 is the son of the respondent no.6. On an application made by the respondent no.6 before the Maintenance Tribunal, an order dated November 26, 2019 was passed by the Learned Tribunal directing the writ petitioners/appellants to vacate the house belonging to the respondent no.6. This order was challenged by the appellants before the learned Single Judge.

4. It was submitted on behalf of the writ petitioners that the procedure prescribed in Section 5 of the said Act was not followed by the Learned Tribunal and, therefore, the writ court should set aside the order of the Learned Tribunal. It was submitted on behalf of the respondent no.6 that the procedure under Section 5 of the Act had been complied with and, furthermore, since an appeal lies against the impugned order of the Learned Tribunal under Section 16 of the said Act, the writ petition should not be entertained.

5. The Learned Judge held that there was an alternative and efficacious remedy available to the writ petitioners and no exception with regard to lack of jurisdiction and/or violation of the principle of natural justice was present in the facts of the case. Accordingly, the Learned Judge disposed of the writ petition with liberty to the writ petitioners to approach the appropriate Forum within a period of ten days from the date of the order.

6. This order of the Learned Single Judge is assailed before us by the writ petitioners in the present appeal.

7. We have heard learned counsel for the appellants and learned counsel for the respondent no.6.

8. Section 16 of the said Act reads as follows:-

> *"(1) Any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal:*
>
> *Provided that on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent the amount so ordered, in the manner directed by the Appellate Tribunal:*
>
> *Provided further that the Appellate Tribunal may, entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.*
>
> *(2) On receipt of an appeal, the Appellate Tribunal shall, cause a notice to be served upon the respondent.*
>
> *(3) The Appellate Tribunal may call for the record of proceedings from the Tribunal against whose order the appeal is preferred.*

(4) The Appellate Tribunal may, after examining the appeal and the records called for either allow or reject the appeal.

(5) The Appellate Tribunal shall, adjudicate and decide upon the appeal filed against the order of the Tribunal and the order of the Appellate Tribunal shall be final:

Provided that no appeal shall be rejected unless an opportunity has been given to both the parties of being heard in person or through a duly authorised representative.

(6) The Appellate Tribunal shall make an endeavour to pronounce its order in writing within one month of the receipt of an appeal.

(7) A copy of every order made under sub-section (5) shall be sent to both the parties free of cost."

9. On a bare reading of Section 16 it appears to us that the right of appeal has been conferred only on the Senior Citizen or Parent, as the case may be, who is aggrieved by an order of the Maintenance Tribunal. The wording of the said Section is absolutely clear. There does not seem to be any scope for confusion. The Legislature in its wisdom has restricted the right of appeal under section 16 to the Senior Citizen or Parent. There could be good reason for the same. The Act is a piece of legislation meant to enhance the welfare of Parents and Senior Citizens. The said Act imposes an obligation on the children or relatives (as defined in Sections 2(a) and (g) of the Act) to maintain the Parent or Senior Citizen, as the case may be. Hence, possibly the Legislature thought it fit to limit the right of appeal under Section 16 to the Parents and Senior Citizens.

10. Learned counsel for the respondent No.6 submitted that to interpret Section 16 of the Act as conferring a right of appeal only on the Parents and

Senior Citizens and not on the children or relatives would be anomalous and render the said provision arbitrary, discriminatory and bad in law. Hence, that section should be interpreted as also conferring a right of appeal on the children and relatives. According to learned counsel, this canon of interpretation should be adopted to save the Section from being declared *ultra vires* the Constitution. In this connection, learned counsel relied on a decision of a Division Bench of the Hon'ble Punjab & Haryana High Court in the case of ***Paramjit Kumar Saroya & Ors. v. The Union of India & Ors.: AIR 2014 P & H 121***. One of the issues that fell for determination by the Hon'ble Punjab & Haryana High Court was whether or not Section 16 of the said Act gives a right of appeal to the children and relatives. After discussing various decisions of the Hon'ble Apex Court, the High Court concluded that right to prefer appeal under Section 16 is also granted to the children and relatives. The concluding and operative portion of that judgement on this issue is in paragraph 32 of the judgement, which reads as follows:-

> *"32. Now coming to the conspectus of the discussion aforesaid, we have no doubt in our mind that we would be faced with the serious consequences of quashing such a provision which deprives the right of one party to the appeal remedy, while conferring it on the other especially in the context of the other provisions of the same Section as well as of the said Act. We have to avoid this. The only way to avoid it is to press into service both the principles of purposive interpretation and casus omissus. The Parliamentary discussions on the other provisions of the said Act do not convey any intent by which there is any intent of the Parliament to create such a differentiation. There is no point in repeating what we have said, but suffice to say that if nothing else, at least to give a meaning to the first proviso of Section 16(1) of the said Act, the*

only interpretation can be that the right of appeal is conferred on both the sides. It is a case of an accidental omission and not of conscious exclusion. Thus, in order to give a complete effective meaning to the statutory provision, we have to read the words into it, the course of action even suggested in N. Kannadasan's case (supra) in para 55. How can otherwise the proviso to sub-section (1) be reconciled with sub-section itself. In fact, there would be no need of the proviso which would be made otiose and redundant. It is a salutary rule of construction of a statute that no provision should be made superfluous. There is no negative provision in the Act denying the right of appeal to the other parties. The other provisions of the Act and various sub-sections discussed aforesaid would show that on the contrary an appeal from both sides is envisaged. Only exception to this course of action is the initial words of sub-section (1) of Section 16 of the said Act which need to be supplanted to give a meaning to the intent of the Act, other provisions of the said Act as also other sub-sections of the same Section of the said Act. In fact, in Board of Muslim Wakfs Rajasthan's case (supra), even while cautioning supply of casus omissus, it has been stressed in para 29 that the construction which tends to make any part of the statute meaningless or ineffective must always be avoided and the construction which advances the remedy intended by the statute should be accepted. This is the only way we can have a consistent enactment in the form of whole statute."

11. We have carefully considered the aforesaid judgement of the Hon'ble Punjab & Haryana High Court. With the deepest of respect, we are unable to agree with the said judgement on the issue which we are presently faced with. In our considered opinion, when the words of a statute are unambiguous, crystal clear and admitting of only one interpretation, the principles of purposive interpretation or *casus omissus* ought not to be invoked. The words must be given their plain and natural meaning. The Hon'ble Supreme Court has laid down that when the wordings of a statute or a particular Section thereof are

absolutely clear, there is no scope for applying any canon of interpretation. In this connection, reference may be made to the following decisions of the Hon'ble Apex Court.

12. In the case of ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors.: (2018) 9 SCC 1*** at paragraphs 21 and 22 of the reported judgement, the Supreme Court observed as follows:-

> *"21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.*
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> *22. In **Kanai Lal Sur v. Paramnidhi Sadhukhan**, it was held that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."*

In the same decision at paragraph 25, the Hon'ble Supreme Court observed as follows:-

> *"25. At the outset, we must clarify the position of "plain meaning rule or clear and unambiguous rule" with respect to tax law. "The plain meaning rule" **suggests** that when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the courts sometimes have made strict interpretation subordinate to the plain meaning rule, though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilise*

> *strict interpretation in the event of ambiguity is self-contradictory."*

Although the observations in the aforesaid paragraph have been made in the context of tax law, in our view, the observations would apply with equal force in case of other statutes.

13. In ***B. Premanad & Ors. v. Mohan Koikal & Ors.*** (Civil Appeal No.2684 of 2007), the Hon'ble Supreme Court held, inter alia, as follows:-

> *"In **M/s. Hiralal Ratanlal v. STO: AIR 1973 SC 1034**, this court observed:-*
>
> > *"In construing a statutory provision the first and foremost rule of construction is the literal construction. All that the court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."*
>
> *It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide **Swedish Match AB v. Securities and Exchange Board, India: AIR 2004 SC 4219**. As held in **Prakash Nath Khanna v. C.I.T.: 2004 (9) SCC 686**, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no*

mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide ***Delhi Financial Corporation v. Rajiv Anand: 2004 (11) SCC 625****. Where the legislative intent is clear from the language, the court should give effect to it, vide* ***Government of Andhra Pradesh vs. Road Rollers Owners Welfare Association: 2004 (6) SCC 210****, and the court should not seek to amend the law in the garb of interpretation.*

As stated by Justice Frankfurter of the U.S. Supreme Court (see 'Of Law & Men: Papers and Addresses of Felix Frankfurter'):

> *"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."*

As observed by Lord Granworth in ***Grundy v. Pinniger: (1852) 1 LJ Ch 405****:*

> *"To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."*

In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn. Pp 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

As the Privy Council observed (per viscount Simonds, L.C.):

> *"Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used." (see Emperor v. Benoarilal Sarma, AIR 1945 PC 48, pg.53).*

As observed by this court in ***CIT v. Keshab Chandra Mandal: AIR 1950 SC 265****:*

> *"Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute".*

Where the words are unequivocal, there is no scope for importing any rule of interpretation vide ***Pandian Chemicals Ltd. v. C.I.T.: 2003 (5) SCC 590****.*

It is only where the provisions of a statute are ambiguous that the court can depart from a literal or strict construction vide ***Narsiruddin v. Sita Ram Agarwal: AIR 2003 SC 1543****. Where the words of a*

statute are plain and unambiguous effect must be given to them vide ***Bhaiji v. Sub-Divisional Officer, Thandla: 2003 (1) SCC 692****."*

14. Our attention has been drawn to the decision of a learned Single Judge of the Gujarat High Court in the case of ***Rajesh Kumar Bansraj Gandhi & Anr. v. State of Gujarat & Ors.: AIR 2016 Guj 129*** as also to a decision of a learned Single Judge of our court in **C.O. No.3416 of 2018 (*Anand Kumar Agarwal & Anr. v. Ashok Kumar Agarwal***). In both the said cases, the learned Judges have taken the view that in view of the unequivocal wording of Section 16 of the said Act, it must be held that the right of appeal thereunder is not available to the children and relatives and, therefore, a writ petition is maintainable against an order of the Maintenance Tribunal at the instance of the children or relatives, as the case may be. We are inclined to agree with the reasoning and conclusion reached in the said two decisions to the extent that the said decisions hold that right of appeal under Section 16 of the said Act is conferred only on the Parents and Senior Citizens and not on the children and relatives.

15. We are fortified in taking the above view by the Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill, 2019, which is pending for consideration before the Parliament. By the said Bill, certain provisions of the said Act are proposed to be amended. One of the amendments proposed is to make the right of appeal under Section 16 of the Act available to the children and relatives. This would indicate that the said Act, as its stands presently, does not confer such right of appeal on the children or relatives.

16. Relying on the decision of the Punjab & Haryana High Court in the case of ***Paramjit Kumar Saroya (supra)***, learned advocate for the respondent no. 6 argued that unless Section 16 of the said Act is construed as providing a right of appeal also to the children and relatives, there is a possibility of there being parallel proceedings resulting in conflict of judicial decisions. There may be an order of the Maintenance Tribunal with which both the Parents/Senior Citizens and the children/relatives are aggrieved. The Parents/Senior Citizens would challenge the order before the Appellate Authority constituted under the Act. The children/relatives would have to challenge the order by way of a proceeding under Articles 226 or 227 of the Constitution before the High Court. This would give rise to an anomalous situation and possibility of conflict of decisions. Such a mischief can be avoided if Section 16 of the Act is interpreted as giving a right of appeal to the children/relatives also.

17. With respect to the learned counsel, we are not impressed with this argument. Theoretically, such a situation may arise. However, there would be no possibility of conflict of decisions if the High Court withdraws to itself the statutory appeal filed by the Parents/Senior Citizens. This power the High Court has, whether under Article 226 or under Article 227 of the Constitution.

18. In view of the aforesaid, we set aside the judgement and order impugned in this appeal and remand the matter to the learned Single Judge having determination to hear the matter, for consideration afresh.

19. Learned counsel for the respondent no.6 argued that even assuming that no alternative remedy is available to the writ petitioners/appellants, still, an

order of a Tribunal cannot be challenged by way of an application under Article 226 of the Constitution of India and that must be done only by way of an application under Article 227 of the Constitution. We have noted this point as urged before us. However, we express no opinion thereon. We leave all issues open for the learned Single Judge to decide including the point of maintainability of the writ petition except on the ground of availability of an efficacious alternative remedy in the form of appeal under Section 16 of the said Act, since in our opinion, such right of appeal is not available to the writ petitioners.

20. The appeal and the connected stay application are accordingly disposed of.

21. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

I agree.

(Arijit Banerjee, J.) **(Abhijit Gangopadhyay, J.)**