

Premier Tyres Limited vs Kerala State Road Transport ... on 4 September, 1992

Equivalent citations: AIR 1993 SC 1202, 1993(2) KLT 130(SC), 1993 SUPP(2) SCC 146, AIR 1993 SUPREME COURT 1202, 1992 AIR SCW 3365, 1993 (2) ALL CJ 1011, 1993 ALL CJ 2 1011, 1993 (2) SCC(SUPP) 146, (1993) 2 KER LT 130

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Bench: R.M. Sahai, B.P. Jeevan Reddy, S.P. Bharucha

ORDER

R.M. Sahai, J.

1. The short and the only question of law that arises for consideration in this appeal is the effect of non filing of appeal in the connected suit tried together with common issues.

2. The appellant filed a suit for recovery of certain amount due to it on the supplies made by it to the respondent-Corporation. Whereupon the respondent-Corporation filed a suit for recovery of the excess amount paid by it to the appellant. The claim of the appellant was that it was entitled to the invoice price whereas according to the respondent the Corporation was not liable to pay in excess of D.G.S. & D. contract rates. Both the suits were connected and tried together as the nature of dispute in both the suits were same. Issues framed were also common. The trial Court found that the Corporation was liable to pay for the goods supplied to it by the appellant only at D.G.S. & D. contract rates. Even on this finding the claim of appellant was found substantiated for a part and consequently the suit was decreed to that extent. The suit of the Corporation was also decreed in part and it was directed that in respect of supplies where the payment had been made in excess of D.G.S. & D. rates, the respondent was entitled to refund. The appellant did not file any appeal against the dismissal of the suit for the part of its claim but appeal was filed against the decree granted in favour of the Corporation in the suit filed by it. At the time of hearing, the High Court dismissed the appeal of the appellant as barred by resjudicata as the finding recorded in the connected suit that the appellant was entitled to charge and collect only on the D.G.S. & D. rates and not on the invoice price had become final.

3. The validity of this finding has been assailed by Shri Raja Ram Aggarwal, the learned Sr. Advocate appearing on behalf of the appellant. It is urged that Section 11 of the Civil Procedure Code does not apply as such. According to him since both the suits were connected and decided by a common order

the issue in neither suit can be said to have been decided in a former suit. Therefore, the basic ingredient of Section 11 of the C.P.C. was not satisfied. The submission derives some support from observations in *Narhari v. Shanker*, that, 'even when there are two suits it has been held that decision given simultaneously cannot be a decision in the former suit'. But this decision was distinguished in *Sheodan Singh v. Smt. Daryao Kunwar* 1966 SC 1332, as it related to only one suit, therefore, the observations extracted above were not relevant in a case where more than one suit were decided by a common order. The Court further held that where more than one suit were filed together and main issues were common and appeals were filed against the judgment and decree in all the suits and one appeal was dismissed either as barred by time or abated then the order operated as *res judicata* in other appeals, 'In the present case there were different suits from which different appeals had to be filed. The High Court's decision in the two appeals arising from suits Nos. 77 and 91 was undoubtedly earlier and therefore the condition that there should have been a decision in a former suit to give rise to *res judicata* in a subsequent suit was satisfied in the present case. The contention that there was no former suit in the present case must therefore fail'. In *Shri Ramagya Prasad Gupta v. Sri Murli Prasad*, an effort was made to get the decision in *Sheodan Singh* (supra) reconsidered. But the Court did not consider it necessary to examine the matter as the subject matter of two suits being different one of the necessary ingredients for applicability of Section 11 of the C.P.C. were found missing.

4. Although none of these decisions were concerned with a situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non filing of appeal against a judgment or decree is that it become final. This finality can be taken away only in accordance with law. Same consequences follows when a judgment or decree in a connected suit is not appealed from.

5. Mention may be made of a Constitution bench decision in *Badri Narayan Singh v. Kamdeo Prasad Singh*. In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The Court observed, 'We are therefore of opinion that so long as the order in the appellant's appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect.

6. Thus the finality of finding recorded in the connected suit, due to non filing appeal, precluded the Court from proceeding with appeal in other suit. In any view of the matter the order of the High Court is not liable to interference.

7. In the result this appeal fails and is dismissed. But there shall be no order as to costs.