Delhi High Court
Dhaki Ram vs Financial Commissioner on 2 April, 1968
Equivalent citations: 4 (1968) DLT 516
Author: I Dua
Bench: I Dua, J Singh
JUDGMENT I.D. Dua, J.

(1) The ahort point requiring determination in this appeal is whether an order dismissing an earlier writ petition under Articles 226 and 227 of the Constitution with the word "dismissed" op (2) In support of the appeal, reliance has been placed on a judgn ment of the Supreme Court in Daryoo Ram v. State of U.P., and paragraph 19 of the judgment at p. 1466 of the report has been specifically died upon That paragraph reads as under :- "WEmast now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that it a writ petition filed by a party under Art. ...20 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is toherwise modified or reversed by appeal or toher appropriate proceedings permissible under the Constitution. It would nto be open to a party to ignore the said judgment and move this Court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is dismissed nto on the merits but because of the laches of the paity applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would nto constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. It a writ petition is dismissed in ilmine and an order is pronounced in that behalf, whether or nto the dismissal would constititute a bar would depend upon the nature of the order. If the order is on the merits it would he a bar: if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that be had an altemative remedy it would nto be a bar, except in cases which we have already indicated. If the petition is dismissed in liming without passing a 'peaking order then such dismissal cannto be treated as creating a bar of res judicata. It is true that, prima fade. dismissal in limme even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking older it would nto be easy to decide' what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art. 32. If the petition is dismissed as withdrawn it cannto be a bar to a subsequent petition under Art. 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no toher. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us."

Accoiding to the learned counsel.the Supreme Court has laid down as an absolute rule that dismissal in liming of a petition under Article 226 of the Constitution can never operate as res judicata unless it clearly shows on the face of the record that it was a decision on the merits; in toher words, according to the counsel, it must be a speaking order showing that all the points have been adverted to by the learned Judges making the order disposing of the writ petition. The learned counsel has

also in this connection tried to distinguish a Full Bench decision of the Punjab .High Court in Bansi v. Additional Director Consolidation of Holdings, in which it was held that the dismissal in liming of awrit petition. under Article 226 of the Constitution by a Bench of the High Court Dars secona petition by the same petitione the same High Cort. when based on similar facts. This Full Bench decision is on all fours with the case before us, but the learned counsel for the appellant has eloquently contended that this decision does nto correctly construe the judgment of the Supreme Court in Daryao's case. A passing refer. ence has also been made to antoher Supreme Court decision reported as Mool Chand Sharma v. State of Uttar Pradesh, in which it was laid down that an order, dismissing a writ petition in liming nto on merits but on the ground that it was premature, could nto operate as res-judicata in subsequent proceedings.

(3) After hearing the learned counsel for the appellant, we are far from satisfied that the view taken by the learned Single Judge is in any way incorrect. On the toher hand, his view is fortified by the Full Bench decision of the Punjab High Court, with which we are in respect. ful agreement. In our view, there is no obligation for a Mtoion Bench of the High Court dismissing a writ petition in liming to make a detailed speaking order in the sense that it must record reasons for disagreeing with the contentions raised, Neither does Article 226 enjoins the Bench to do so, nor do the Rules framed by the High Court. It would really be a question to be decided in each case whether or nto an order of dismissal however expressed is or is nto a decision on the meeits of the writ petition so as to attract the rule of res-judicata. When a res is judicata, it would normally bar re-opening of the same res between the same parties. If a writ petition is dismissed, either because it is premature or because there is an alternative remedy available to the litigant, or if the High Court declines to go into the merits in the exercise of its judicial discretion, then such an order may nto operate as res judicata on the merits because in that event, the matter cannto be considered to have been heard and finally decided. But if such is nto the position, then in case of dismissal of the earlier petition, the doctrine of res judicata would clearly be attracted. If a point which is sought to be raised later, was no raised or pressed in the earlier proceedings, the rule of constructive res judicata would also bs attracted Conceding that section 11 of the C.P. Code in terms applies only to suits, and is nto technically attracted to writ proceedings, the general principles of res judicata, do apply to them and constractive res judicata is indisputably a constituent element of this general doctrine. The application of this doctrine, it may be remembered, is nto influenced by any technical consideration of form but by matter of substance within the limits allowed by law. In Devilal Modi v. Sales Tax Officer, Gajendragadkar, C.J. speaking for a Beach of five Judges stated the view of the Court thus :- "THEpresent proceedings illustrate how a citizen who has been ordered to pay a tax can postpone the payment of the. tax by prolonging legal proceedings Interminably. We have already seen that in the present case the appellant sought to raise additional points when he brought his appeal before this Court by special leave- that is to say, he did nto take all the points in the Writ Petition and thought of taking new points in appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court had decided against him on the merits of those points, he has come to this Court; but that is nto all. At the hearing of this appeal, he has filed antoher petition asking for leave from this Court to take some more additional points and that shows that if constructive res judicata is nto applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is

based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be aGopted, the doctrine of finality of judgments pronounced by this Court would also be materiaely affected."

This reasoning clearly brings out the starting consequences which may flow from the acceptance of the appellant's argument. On the aforesaid considerations of public policy, the general principle of res judicata would seem to apply to all natters existing at the time of the earlier order which the party had an opportunity of bringing and urging before the Court. 'The order dismissing the writ petition--if that order cannto be construed to exclude a decision on the merits- en the reasoning of the Supreme Court decision Just reproduced, must ordinarily bar future applications for similar relief on identical grounds. The general doctrine of res judicata, designed as it is to secure conclusiveness of adjudication as to the points decided, must be attracted in such a situation. In the case in hand, it is nto the appellant's contention that any new ground is being sought to be raised in the present proceedings, with the result that it is nto necessary to have resort to the rule of constructive res-judicata which would disentitle the party from raising even toher points which he might and ought to have raised on the earlier occasion. The dismissal on the merits of the writ petition under Article 226 of the Constitution even by recording the word "dismissed" would bar future applications in that Court if that order is allowed to become final by failure to challenge it on appeal. The appellant's argument to the contrary seems to us to be ac:eptable neither on principle nor on authority. The respondents' learned counsel, we may point out, has relied on Amalgamated Coalfields v. Janpada Sabha, Ramesh v. Seth Gandalal Mtoilal Patni, Kirpal Singh v. The Union of India, and an unreported decision of the Supreme Court in Virdhunagar Steel Rolling Mills Ltd., v. Government of Madras, Writ Petition No. 39 of 1967, but we do nto consider it necessary to refer to them at length, for we entertain little doubt that the view taken by the learned Single Judge is quite correct and sound.

(4) For the foregoing reasons, we dismiss this appeal with costs.