

the UN should condemn the same collectively and exuberantly implement action of the Geneva Convention to the treatment of prisoners of war in Iraq. Today the world is becoming much smaller. All countries are becoming each other's neighbours and in this changing situation, the universality of human rights is no longer a theoretical concept. People in one country are aware of what is happening in other countries. Now the concept of sovereignty is being questioned. It is not that the concept of sovereign is going to vanish, but these concepts/ideas have their own momentum and they have

their own limitations and so in that sense, today universality has a much more concrete and real meaning. The international community should do what can to proceed faster in the field of human rights of prisoner of war and must accept the responsibility to see that the rights of prisoner must be protects and promote. The world continues to be iniquitous, it does not underpin this concept of human rights. The fact that there is no just world makes it much more difficult for the prisoner of war to ensure human rights even within the boundaries of prison.

**A NOTE ON THE DECISION OF HON'BLE SRI B.S.A. SWAMY, J.,
IN ADHIKARALA JAGADEESWARA RAO V. GOPALAKRISHNA
TRANSPORT, VISAKHAPATNAM ETC., REPORTED IN 2005 (1) ALD 111**

By

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[1] The decision in the above case arose out of The Motor Vehicles Act, 1988. The claimant in the M.V. Tribunal, not having been satisfied with the compensation granted by the Tribunal, appealed to the High Court seeking further amount as compensation. During the course of the hearing of the matter, a new contention was advanced by the Counsel for the Insurance Company. As it appears from the judgment, the said contention was not urged before the Tribunal below and no cross-appeal or cross-objections are filed separately raising that particular contention. Therefore, the Hon'ble Judge framed seven points by way of issues and directed the concerned Counsel to advance arguments of those aspects. For our present purpose, reference to points Nos.1 and II is relevant. The 1st point is whether without filing an appeal the respondents can get the finding of the Tribunal displaced in an appeal filed by the opposite party by virtue

of Order 41 Rule 33 CPC and the 2nd point is whether in an appeal filed by the opposite party the respondent is prohibited from canvassing the correctness of the Award (Judgment of the Lower Court).

[2] That means, whether a respondent in an appeal in whose favour there is a decree, can canvass the correctness of a finding of a lower Court to the extent it is against him without himself filing an appeal or cross objection against such findings in the judgment.

[3] In the above judgment His Lordship, Hon'ble Sri *B.S.A. Swamy* J., after discussing this aspect ultimately observed in Para 18 of His Judgment that the view of the Hon'ble Supreme Court in the case of Delhi Electricity Supply undertaking case 1999 (2) U.J. 1536 (SC) = AIR 2000 SC 431 = 2000 SAR 29, is more reasoned that the earlier decisions of the Supreme Court in A.I.R. 1987 S.C. 725

and A.I.R. 1982 S.C. 98. But at the end of that Para 18, it is observed that unless cross-objections are filed, the Appellate Court can not exercise the power under Order 41 Rule 33 C.P.C.

[4] In my view, the said observation of His Lordship Sri B.S.A. *Swamy* J., in Para 18 of his judgment, that a Court cannot exercise the power under Order 41 Rule 33 CPC unless cross-objections are filed, seems to be not correct. The reasons for this are the observations of the Hon'ble Supreme Court themselves in that Delhi Electricity Supply Undertaking case - 1999 (2) U.J. 1536 = AIR 2000 SC 431 = 2000 SAR 29. These observations are in Para 18 of the Supreme Court Judgment which I am extracting.

“Para 18.

This provision was examined by this Court in *Mabant Dhangir and another*, 1987 SCC Suppl. 528 in the following words:

“The Sweep of the Power under Rule 33 is wide enough to determine any question not only between the appellant and the respondent, but also between respondent and co-respondents. The appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The Appellate Court could also pass such other decree or order as the case may require. The words “as the case may require” used in Rule 33 of Order 41 have been put in wide terms to enable the appellate Court to pass any order or decree to meet the ends of justice. What then should be the constraint? We do not find any. We are not giving any liberal interpretation. THE RULE ITSELF IS LIBERAL ENOUGH. The only constraint that we could see, may be these: That the parties before the Lower Court should be there before the appellate Court. The question raised must properly arise out of the judgment of the lower Court. If these

two requirements are there, the Appellate Court could consider any objection against any part of the judgment or decree of the lower Court. It may be urged by any party to the appeal. It is true that the power of the Appellate Court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. THE COURT SHOULD NOT REFUSE TO EXERCISE THAT DISCRETION ON MERE TECHNICALITIES”.

[5] Therefore in view of the above clear observations of the Apex Court, it is to be seen whether the filing of cross-objections by a respondent in an appeal is mandatory for assailing certain adverse findings of a lower Court in the judgment under appeal, and whether the view expressed by our High Court in the decision under consideration is correct.

[6] In my view the filing of cross-objections is not necessary and I am giving my reasons for the same hereafter.

My reasons:

(a) The intendment of this Rule is to enable the Appellate Court to exercise certain powers. In fact the heading of the Rule itself is “Power of Court of Appeal”.

(b) A reading of the said Rule itself clearly shows that “ *The appellate Court shall have the power to pass any decree and make any order which ought to have been passed or made and to pass or make such further decree or order as the case may require*”. The rule further says that this power can be exercised by the Appellate Court “*Although the appeal on hand is only as to part only of the decree and it can be exercised in favour of or any of the respondent or party although such respondents or party may not have filed any appeal or objection*”. By virtue of the amendment of C.P.C. by Act 104 of 1976, the power of the Appellate Court

is further enlarged and it is provided that where there have been decrees in cross suits or where two or more decrees are passed in one suit, the power can be exercised in respect of all or any of the decrees although an appeal may not have been filed against such decrees. Thus the power of the Appellate Court is an unqualified power which can be exercised in favour of all or any of the respondents or parties even though such of the parties have not filed an independent appeal or cross-objections. This is because the Rule itself is liberal enough as observed by the Apex Court.

(c) This provision under Order 41 Rule 33 is in a way connected to Rule 4 also which says that where there are more plaintiffs or more defendants than one in a suit and the decree appealed or proceeds on any ground common to all the plaintiffs or to all the defendants may appeal from the whole decree and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

[7] The scope of Order 41 Rule 33 is discussed in many decisions. However, I am giving the list of decisions which are rendered in recent years. In the following decisions, the Honourable Supreme Court and the various High Courts categorically and clearly held that when a decree in a suit is passed in favour of a successful party, but there is a finding on any point adverse to such successful party, he need not file cross-objections or cross appeal. The need for a cross objection or cross appeal arises only in case where the decree as such is against a party. Even in cases where there are adverse findings, the Appellate Court irrespective of the preferring of cross-objections, has got ample power to set right such findings by the lower Court.

LIST OF DECISIONS - (YEAR-WISE):

1. AIR 1989 Allahabad Page 133.

2. AIR 1991 Madhya Pradesh Page 11.
3. AIR 1993 Andhra Pradesh Page 147.
4. AIR 1993 Rajasthan Page 51.
5. 1997 (3) Andhra Weekly Reporter, Page 111.
6. AIR 1999 SC Page 3571.
7. 1999 (5) ALT Page 529.
8. AIR 2000 MP Page 227.
9. AIR 2000 SC 431 = 1999 (2) U.J. 1536 = 2000 SAR Page 29.
10. 2003 (1) Andhra Weekly Reporter, Page 600.
11. 2003 (4) Current Civil Cases, Page 401.
12. 2004 (4) ALD Page 220.
13. 2004 (4) ALD Page 597.
14. 2004 (4) ALD Page 729.

[8] In the judgment in question His Lordship Sri *B.S.A. Swamy*, J., relied upon a decision of the Supreme Court reported in AIR 1999 SC 1747. In this case the Supreme Court discussed the scope of Order 41 Rule 22 and not about the Rule 33. Further the said case before the Supreme Court arose under The Arbitration Act, 1940. In that case there was an Award passed in favour of the contractor against the Government and the Government represented by the Superintending Engineer preferred appeal before the Supreme Court. With regard to the claim for interest the respondent (contractor) preferred cross-objections. The Supreme Court held that the cross-objections in that appeal are not maintainable because of Section 41 of that Arbitration Act. The scope of Order 41 Rule 22 was also discussed and ultimately the cross objections in that appeal were held to be not maintainable and the appeal before the Supreme Court by the Government was allowed in part. This is because of a Special Provision in The Arbitration Act, 1940. Therefore the reliance upon this decision

placed by Hon'ble Sri *B.S.A. Swamy*, J., does not seem to be correct. In the same volume (AIR 1999 Supreme Court) at Page 3571 there is a direct decision discussing the scope of Order 41 Rule 33. I am extracting the observations of the Hon'ble Supreme Court in that case AIR 1999 SC 3571 which are as follows:

AIR 1999 SC 3571 (Para 22) His Lordship Honourable Shri *M. Jagannadha Rao*, J., ruled as follows:

“In our view, the opinions expressed in 1985 (89) C W N 685 and in AIR. 1981 MP 55 reflect the correct legal position after 1976 Amendment. “We hold that the respondent defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondents for the purpose of substituting our decree to the extent the lower Court had dismissed the suit against the defendants - respondents. *The filing of cross-objections after the 1976 Amendment is*

purely optional and not Mandatory. In other words the law as stated by the Full Bench in AIR 1943 Madras 698 and this Court in AIR 1973 SC 2565 is merely clarified by the 1976 amendment and there is no change in the law after the amendment”.

[9] The appeal in the above case before The Apex Court arose out of a suit for damages for malicious prosecution in which the Courts below granted damages in part and the plaintiff claimed further quantum of damages in appeal.

[10] The above observations of the Honourable Supreme Court are very clear leaving no scope for any doubt. Therefore it has to be taken that the legal position is settled. The decision in 2004 (4) ALD 220 mentioned above in the list was rendered on 11.3.2004 by His Lordship Sri *B.S.A. Swamy*, J., himself taking the view that cross-objections need not be filed. Thus, the view expressed in the decision under discussion is incorrect and against settled Law and therefore this decision is per incuriam.

KONDARAJU - QUO VADIS ?

STATUS OF KONDARAJU - LEGAL AMBIGUITY?



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Different Gazettes, Manuals and other authenticated information and the records from 1869 till this date clearly show that many Ex-Feudal Chief families and their blood relations of the present Vizayanagaram District (Erstwhile Vizagapatam District) belong to *Mannedora, Mukadora and Konda Dora* Community. Because of the position as ‘Zamindars’ or ‘Mokhasdars’, the said Zamindary family members and Mokhasdars

family members and their blood relations are known as “Kshatriyas” just like other Zamindars belonging to different castes of erstwhile composite Madras State who were also being called as “Kshatriyas” or “Rajus” and styling themselves as “Kshatriyas” “Oriya Kshatriyas” “Konda Rajus” or “Rajus” while assuming high sounding titles as Raja, Raju, Thatraj, Deo, Bhanj Deo, Jena Deo and Gajapati Deo *etc.* The word Kshatriya has