

Delhi Cooperative Tribunal Vs A.C. Aggarwal

Court: Delhi High Court

Date of Decision: Sept. 13, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 7 Rule 11, 80
Constitution of India, 1950 â€” Article 227
Contempt of Courts Act, 1971 â€” Section 15(2)
Delhi Co-operative Societies Act, 1972 â€” Section 76, 78(6), 78(7), 79, 93(3)
Judges (Protection) Act, 1985 â€” Section 2, 3, 3(1)

Citation: (2006) 91 DRJ 348

Hon'ble Judges: Sanjay Kishan Kaul, J

Bench: Single Bench

Advocate: Amiet Andley and Arun K. Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul, J.

The monetary claim of a litigant against an officer performing judicial functions has given rise to the present litigation.

2. The respondent is a retired IAS officer and in terms of an award dated 23.02.1999 was held liable to pay maintenance/water charges in respect

of the Delhi Officers Cooperative House Building Society Limited along with interest.

3. The respondent aggrieved by the same filed two appeals u/s 76 of the Delhi Cooperative Societies Act, 1972 (herein-after referred to as the

"Societies Act") in respect of the two cases decided in terms of the award. These petitions were dismissed in limine by Sh. Madan Jha, Delhi

Cooperative Tribunal, Delhi in 18.05.1999. The respondent aggrieved by the same filed a writ petition in this Court being Civil Writ Petition No.

1061/2000, but the same was dismissed for non prosecution on 63.03.2003. The respondent took no steps to get the same restored. The

respondent filed a suit for recovery of Rs 8,000/-against Mr. Madan Jha, IAS, Presiding Officer, Delhi Cooperative Tribunal in July, 2000 after

the Tribunal had passed an order but before dismissal of the writ petition for non prosecution. The claim in the suit is on account of injury caused

by Sh. Madan Jha by his acts of commission and omission. The history of the dispute between the respondent and the Society in respect of the

maintenance charges has been set out in the plaint and it has been alleged that the appeals decided by Sh. Madan Jha are conclusive and cannot be

called into question in any civil or revenue court. It has also been alleged that the arbitrator had intentionally committed various acts of omission and

commission which were brought to the notice of the Tribunal but Sh. Madan Jha deliberately and maliciously did not consider any of the acts of

omission and commission on the part of the arbitrator who has failed to take note of various facts and pleas while passing the order. It is thus

claimed that he is guilty of misfeasance while performing his duties as Presiding Officer of the Tribunal and did not act in good faith and it is a case

of proven mala fide. The damages claimed of Rs 8,000/- are on two accounts - financial loss of Rs 6,000 in the appeal and Rs 2,000/- on account

of mental anguish and harassment. The plaint states that the notice was served u/s 80 of the Code of Civil Procedure, 1908 (herein after referred to

as the said Code). The said notice has been addressed to Sh. Madan Jha, Presiding Officer, Delhi Cooperative Tribunal.

4. The Civil Judge took cognizance of the suit and issued summons. The Presiding Officer of the Tribunal made a reference to this Court u/s 15(2)

of the Contempt of Court Act, 1971. The suit filed by the respondent also was dismissed in default on 02.02.2001. In the contempt matter, this

Court noticed the unfortunate flow of communications from the Tribunal to the Civil Court and the matter was considered on 02.05.2002.

The reference made against the Civil Judge was discharged and the Division Bench of this Court found that the language used by Mr. Madan Jha

was contemptuous. He appeared before the court and submitted an unconditional and unqualified apology on affidavit. The respondent was also

impleaded as a contemnor and both the respondent and Mr. Madan Jha stated that they were repentant on engaging themselves in this litigation

and wanted to put an end to it. Both these persons were retired IAS officers even at that stage. In view of the repentance shown, the Division

Bench found no warrant for continuation of the proceedings, which were dropped. It was expected that this would put an end to the unsavoury

litigation but the respondent thereafter filed an application for restoration of his civil suit which had been dismissed for non prosecution. The suit

was restored to its original number on 03.06.2002 and it was directed that the written statement should be filed. The written statement was filed by

the Tribunal through its then Presiding Officer Sh. K.S. Baidwan and the preliminary objection was raised that the suit was not maintainable in view

of Section 78(7) of the Societies Act since an order passed in an appeal or any revision or any review u/s 76, 78(6) & 79 of the Societies Act was

to be final and conclusive and was not to be called in question in any civil or revenue court. Further Section 93(3) of the Societies Act provides

that no order, decision or award made under the Act shall be questioned in any court on any ground whatsoever.

5. On 18.12.2003, the trial court took the view that the suit filed by the respondent was against Mr. Madan Jha in his personal capacity and thus

the written statement should be filed by Sh. Madan Jha. This order was challenged by the Tribunal in an appeal before the learned Additional

District Judge which stands dismissed by the impugned order dated 17.02.2005. The appellate court took note of the fact that the suit is stated to

have been filed against Mr. Madan Jha in his personal capacity and if the petitioner was to be impleaded, an application ought to have been filed

for the said purpose. The present proceedings under Article 227 of the Constitution of India have been filed thereafter.

6. Learned Counsel for the petitioner contended that the suit had been filed against Sh. Madan Jha in the capacity of Presiding Officer of the

Tribunal which would be apparent from the frame of the suit as also the notice issued u/s 80 of the said Code while this position is disputed by the

respondent appearing in person. In fact the respondent contends that the petitioner has no locus standi to file the present petition.

7. A perusal of the notice dated 16.08.1999, in my considered view, leaves no manner of doubt that the same is addressed to Mr. Madan Jha as

Presiding Officer of the Tribunal. The frame of the suit also does not leave any doubt in this behalf. Sh. Madan Jha has been impleaded as a

defendant in the capacity of the tribunal. A perusal of the averments made in the plaint also shows that the grievance of the respondent is in respect

of the award and the dismissal of the appeals. The grievance against the tribunal is in respect of the performance of its functions in that capacity.

The allegation is that Mr. Madan Jha failed to consider any of the grounds in appeals while summarily rejecting the same and acted maliciously

while discharging his duties. Of course the general principle of misfeasance while performing the duties and not acting in good faith have been made

but there is no doubt that the grievance of the respondent against Mr. Madan Jha is in the performance of his duties.

8. I am thus unable to accept the plea of the respondent and find a patent error in the impugned orders which seek to give a colour of personal

litigation by the respondent against Mr. Madan Jha, which is contrary to the record; There is no doubt that in view of the provisions of Section

78(7) no order passed u/s 76, Section 78(6) or Section 79 can be called into question in any civil or revenue court. The said provision reads as

under: ""78.Delhi Cooperative Tribunal.

(1)....

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) An order passed in appeal u/s 76 or in revision under sub section (6) of this section or in review u/s 79 by the Tribunal shall be final and

conclusive, and shall not be called in question in any civil or revenue court.

9. An important aspect to be taken note of is that the petitioner even deemed it appropriate to challenge the order passed by Sh. Madan Jha on

the judicial side by filing a writ petition No. 1061/2000 which was dismissed for non prosecution on 03.03.2003. No effort was made to seek

restoration of the petition and thus the orders of the Tribunal attained finality.

10. The recital aforesaid of the criminal contempt proceedings also shows that both Sh. Madan Jha and the respondent had expressed regrets for

what had happened and wanted to put an end to the litigation being repentant for the same. Possibly the acrimony arose on account of both Mr.

Madan Jha and the respondent being IAS officers and it became more of an ego issue. Despite making a statement that they want to put an end to

the litigation and consequently the criminal contempt proceedings being disposed of, the respondent chose to reactivate the suit once again.

11. The respondent sought to explain away the aforesaid proceedings in the criminal contempt proceedings which were disposed of on

02.05.2002 alleging that on that date the suit had been dismissed in default and thus was not surviving. This is no answer to the categorical

statement made by the respondent before the Division Bench.

12. The respondent also seeks to contend that the present petition is time barred. This plea is again not available since application for condonation

of delay stands allowed on 15.07.2005.

13. The last aspect urged by the respondent was that the petitioner cannot really get any relief even if this petition was allowed. This plea is

fallacious since the petitioner, the Tribunal, has approached this Court on the premise that the suit filed by the respondent was against the Presiding

Officer of the Tribunal which plea has been accepted by this Court. Thus the consequences of there being a bar to the orders of the Tribunal being

challenged in any civil court would apply in the present case. It is not necessary that in every suit filed summons must be issued. The provision of

Order 7 Rule 11 of the said Code can be usefully referred for the said purpose, which reads as under:

Rejection of plaint - The plaint shall be rejected in the following cases: (a) Where it does not disclose a cause of action.

14. It is obvious from a reading of the aforesaid provision that if there is bar in law, the plaint can be rejected. There is clear bar u/s 78(7) of the

Societies Act which would make the plaint liable to be rejected.

15. There is another important aspect urged by learned Counsel for the petitioner though the plea of the respondent is that no specific ground has

been raised in this behalf. The plea of the petitioner arises from the Judges Protection Act, 1985 and since it is purely a legal matter, I deem it

appropriate to examine the merit of the contention. The Judges Protection Act was enacted for securing additional protection for judges and others

acting judicially and for matters connected therewith. Section 2 defines who is a Judge and Section 3 gives the additional protection to judges.

They read asunder:

2. Definition - in this Act, "Judge" means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give, in any legal proceeding a definitive judgment, or, judgment which, if not appealed against, would be

definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Clause (a).

3. Additional protection to Judges -- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the

provisions of sub section (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any

act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial

duty or function.

(2) Nothing in sub section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme

Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil,

criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

16. The submission of the learned Counsel for the petitioner thus is that a Judge would include any person who is empowered by law to give in

legal proceedings a definitive judgment which if not appealed against would be "definitive. The performance of the functions of the Tribunal would

certainly, in my considered view, fall within the said parameters. Section 3(1) provides for the protection to such a judge to the extent that no court

shall entertain or continue any civil or criminal proceedings against him acting or purporting to act in discharge of his official or judicial duty or

function. Once again Mr. Madan Jha was performing his statutory duties under the Societies Act as a Tribunal and it is those functions which are

now sought to be called in question. A reference was made to the judgment of the Supreme Court in *Rachapudi Subba Rao Vs. Advocate*

General, Andhra Pradesh, where it was observed in para 11 as under:

In the case of acts of the second category, the protection of the statute will be available if at the time of doing, ordering the act, the judicial officer

acting judicially, in good faith believed himself to have jurisdiction to do or order the same. The expression "jurisdiction" in this section has not been

used in the limited sense of the term, as connoting the "power" to do or order to do the particular act complained of, but is used in a wide sense as

meaning "generally the authority of the Judicial Officer to act in the matters". Therefore, if the judicial officer had the general authority to enter upon

the enquiry into the cause, action petition or other proceeding in the course of which the impugned act was done or ordered by him in his judicial

capacity, the act, even if erroneous, will still be within his "jurisdiction", and the mere fact that it was erroneous will not put it beyond his

"jurisdiction". Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceeding. It follows

that if the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from protection of this

statute, the complainant has to establish that (1) the judicial officer complained against was acting without any jurisdiction whatsoever, and (2) he

was acting without good faith in believing himself to have jurisdiction.

17. The grievance made by the respondent really falls within this category of alleged erroneous exercise of jurisdiction by Mr. Madan Jha while

acting as a Tribunal and the mere allegation of bad faith would not suffice. I am thus of the considered view that on this ground also the plaint filed

by the respondent would be barred by law and thus would be liable to be rejected under Order 7 Rule 11 of the Code.

18. It is regretful that the respondent has been continuing the misconceived proceedings, making it a matter of personal animosity with Mr. Madan

Jha, who while performing his duties as a Tribunal declined the appeals of the respondent. Even the criminal contempt proceedings and the regrets

expressed therein did not have any redeeming effect on the respondent and he once again re-started the legal proceedings in the suit, despite

having sought discharge from the criminal contempt proceedings after expressing repentance on engaging himself in the litigation and expressing a

desire to put an end to it.

19. I am of the considered view that the impugned order suffers from patent error and erroneous exercise of jurisdiction by the trial court and the

appellate court. The suit as framed is not maintainable and is liable to be rejected under Order 7 Rule 11 of the said Code and it is so directed.

20. The petition is allowed with costs of Rs. 3,000/-.