

Salla Gurusamy Chetty Trust Vs Tamil Nadu Arya Vysya Maha Sabha (Madras District)

Court: Madras High Court

Date of Decision: Jan. 18, 1996

Acts Referred: Arbitration Act, 1940 " Section 39

Civil Procedure Code, 1908 (CPC) " Order 13 Rule 7, Order 43 Rule 1(r), Order 8 Rule 2, 151, 96

Constitution of India, 1950 " Article 225, 226

Hon'ble Judges: Srinivasan, J; Abdul Hadi, J

Bench: Division Bench

Advocate: M. Ranka and Mr. M.R. Sethuraman, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Srinivasan, J.

The appeal is against an order passed by a learned single judge of this Court on 14-11-1995 in O.A. No. 512 of 1995 in

C.S. No. 637 of 1995 granting an injunction restraining the appellant from dealing with the first floor hall of the property mentioned in the Schedule

to the application in any way detrimental to the benefit conferred on the plaintiff to have the meetings and conferences in the first floor hall. When

the appeal was posted for admission on 20-12-1995, we ordered Notice of Motion returnable on 18-1-1996, and permitted the appellant to

serve notice also privately on the party and the counsel on record for the respondent. The appellant has filed this application for review on 4-1-

1996 contending that the procedure adopted by this Court is against law. According to the appellant, the appeal could have been either admitted

or dismissed and that there is no provision in the Rules to order Notice of Motion to the respondent and giving him an opportunity to have a say in

the matter of admission of the appeal. Before this application was filed, the appellant sought to mention to another Bench to which one of us was a

party and contend that the order of Notice of Motion was not valid and the appeal should be posted for admission. That Bench pointed out that

there was no question of posting the matter for being mentioned and if the appellant was aggrieved by the grant of Notice of Motion, his remedy

was only to seek a review of the said order. The appellant has filed this application stating that there was a direction by the said Bench to him to file

the application for review. Obviously, the appellant is under a misapprehension that the Bench gave such a direction. The observation made by the

Bench that the remedy of the appellant, if at all, could only be by an application for review and there was nothing to be posted for being mentioned,

cannot be construed as a direction to the appellant to file an application for review.

2. When this application was presented, the Registry returned the same on several grounds and also expressed its doubt as to the maintainability of

the petition. The appellant re-presented the papers giving his reply to the objections raised by the office. The office put up a note and circulated the

papers to us. One of us (Abdul Hadi, J.) expressed his opinion that the petition is not maintainable. Hence, the matter was directed to be posted

for orders as to maintainability. Thus, this petition comes before us for orders as to maintainability before it is numbered.

3. The first contention urged by learned counsel for the appellant is that the petition is maintainable, and in any event, it has to be numbered by the

office. According to him, the question of maintainability has to be decided judicially by the Court and not by the Registry. It is contended that

whether a petition is maintainable or not, it has to be numbered by the Registry and posted before Court for orders as to maintainability. We do

not agree with this contention. If a particular petition filed by a party is not sustainable under any of the provisions of law, the Registry can certainly

raise an objection as to the maintainability before taking the petition on file. The first stage of any proceeding is presentation. As soon as it is

presented, it is entered in the Diary or the Stamp Register under a serial number. After the papers are found to be in order and passed by the

Registry, it is given a number and entered in the appropriate register. That stage is known as Filing Stage. It is only at that stage the Court takes the

matter on file. The third stage is one of admission. When the matter is posted before Court and it is found fit for admission, the Court passes orders

as to admission. Thereafter, notice is issued to the respondent. If on the other hand, the Court decides that there is no case for admission, it is

dismissed in limine.

4. In a given case, it is certainly open to the Registry to question the maintainability of a particular proceeding before it is taken on file. That is what

has been done in the present case. The appellant cannot contend that the petition has been filed as directed by a Division Bench and, therefore, it

has to be taken on file. As pointed out already, there was no such direction by the Bench to which one of us (Srinivasan, J.) was a party. Any

observation by the Judge made in the course of arguments of counsel cannot be considered to be a direction.

5. Apart from contending that whether a petition is maintainable or not, it should be numbered and taken on file, learned counsel has not been able

to place any authority before us in support of this contention. This aspect of the matter has been elaborately dealt with by a Full Bench of this

Court in *M. Ranka v. Hon'ble Mr. Justice P.S. Mishra* (1994 Writ L.R. 517), to which one of us (Srinivasan, J.) was a party, in paragraphs 16 to

18 of the judgment, which read as follows:-

16. The first contention of the petitioner is that the Registry ought to have numbered the petition and taken it on file. The requirements of the Rules

framed by this Court under the Contempt of Courts Act have been satisfied in this case. He draws our attention to Rr. 3 and 4 and submits that

numbering a case is ministerial and the Registry cannot refuse to number a case once the papers are in conformity with the Rules.

The said Rules read thus:-

(3). Every case initiated for contempt of Court under the Contempt of Courts Act, 1971 or under any other law, shall be received by the First

Assistant Registrar (Original Side) and registered as a Contempt Case.

(4) Every application for contempt shall be in the form of a petition accompanied by an affidavit specifying details of the contempt alleged together

with all the documents in support thereof.

Learned counsel submits that R.3 is mandatory inasmuch as it used the expression "shall". According to him if the requirements of R.4 are

complied with, the Registry has no option but to register the case under R.3. He places reliance on the judgment of Andhra Pradesh High Court in

Hameen Rahimullah Khan v. Syed Sabir Alias Syed Makhdeem and others (1981 CrL. L.J. 395). A Division Bench of the Court held that in the

absence of any specific Rule requiring the petition in a contempt petition to file all the orders or documents referred to in the petition it is not open

to the Registry to return the petition for filing all papers referred to therein, much less, insist upon filing those material papers in triplicate duly

stitched in book form, paged, indexed and authenticated. It is stated that while the Registry would not be competent to return the petition, the

Court may find that there is no sufficient material before it to warrant initiation of proceeding. Our attention is also drawn to an observation made

by a Division bench of this Court in *the Advocate- General of Tamil Nadu v. R.M. Krishna Raju* (I.L.R. (1981) 2 Madras 246 = (1980) 93 L.W.

84 S.N.) that the Court is governed by the Contempt of Courts Act and the Rules in the matter of procedure and that there is no provision either in

the Act or in the Rules for third parties allowed to intervene in contempt proceedings. Neither of the above rulings has a direct bearing in this case.

17. But there is considerable force in the contention of learned counsel. Theoretically it appears to be well founded. In every proceeding in this

Court, there are four stages: (1) Presentation, (2) Filing, (3) Admission and (4) Final hearing. Whenever any proceeding is presented, the Registry

enters the same in the Stamp Register or General Diary. The serial number of the proceeding represents the number of the proceeding presented in

the year. In this Court, matters presented on the Original Side are entered in the register called Diary and the serial number is known as Diary

Number. In fact, this petition is bearing Diary No. 14283/92. On the appellate side, the registers are called Stamp Register and Unstamped

Register. If a proceeding is filed with court-fee stamps affixed, it is entered in the Stamp Register, and papers which do not bear Court-fee stamps

such as memos or affidavits filed independently and not as part of a proceeding bearing Court-fee stamps, will be entered in the Unstamped

Register. Then the Registry scrutinises the papers and if the requirements of the Rules are satisfied they will be passed and taken on file. At that

stage, they will be entered in the registers separately kept for each class of proceeding. A suit will be entered in the Suit Register; an Original

Petition will be entered in the O.P. Register; an appeal will be in the Register for Appeals. The serial number in such register is the number by

which the proceeding will be referred to thereafter. From that number one will be able to know the class of the proceeding. For example, a

Contempt Petition is numbered as C.A. No.../93. An appeal is numbered as A.S. No. 93. A suit on the Original Side of this Court is numbered as

C.S. No

/93. The number will show the number of the proceeding taken on file in the year. Taking the case on file by assigning a number to the proceeding

does not tantamount to admission of the case. After the proceeding is taken on file, some matters are posted before Court for admission and some

matters are admitted by an official in the Registry according to the Rules, for example, an appeal under S. 96, Code of Civil Procedure, is admitted

by the Deputy Registrar automatically after it is taken on file. Similarly, a Civil Suit is admitted by an officer in the Original Side. In this Court,

Contempt Petitions are posted for admission before Court. At that stage, counsel for the petitioner is heard and if the Court is satisfied that there is

a prima facie case, the Court admits the petition and directs issue of notice to the respondent. The last stage of the proceeding is the final hearing of

the matter when both sides will be heard. Thus, the first two stages, viz., presentation and filing are matters attended to by the Registry while the

last two stages, viz., admission and final hearing are done by the Court. The Registry is concerned only with the procedural requirements and the

scrutiny of papers in any proceeding presented is only for the purpose of ascertaining whether proper stamps are affixed, whether the petition or

plaint is in the prescribed form and whether proper stamps are affixed, and whether the papers required by the Rules to be enclosed are filed, etc.

The Registry is certainly bound to see whether this Court has jurisdiction to entertain the proceeding or whether the proceeding should be

presented in some other Court. Once it is found that this Court has jurisdiction and the Rules relating to the Form and Court-fees are satisfied, the

Registry is bound to take the proceeding on file and give a number to it. A distinction must be made between want of jurisdiction and non-

maintainability on other grounds. In the case of former, the proceeding cannot be taken on file at all. In the latter case, the proceeding can be taken

on file and posted before Court for orders as to maintainability. No doubt, the Registry must raise the objection as to jurisdiction as well as non-

maintainability on other grounds. If the party or counsel accepts the objections of the Registry and takes back the papers, there ends the matter.

But, if the party or counsel contends that the objections of the Registry are unsustainable, the question must be decided by the Court. However,

the practice in this Court has always been to place the papers before the concerned Judge for orders whenever the Registry has a doubt as to the

maintainability or jurisdiction. The Judge, on perusal of the papers, directs the Registry to take the proceeding on file and assign a number to it if he

disagrees with the office and finds that the objection taken by the office is unsustainable. If on the other hand he finds that the office objection is

well taken, he causes the matter to be called in open Court and hears the counsel or the party if the latter appears in person. Depending on his

orders after such hearing, the Registry takes further steps in the matter. In this Court, the Registry does not make any distinction between objection

as to jurisdiction and objection as to maintainability on other grounds.

18. The practice has been in vogue for quite a long time and in no case, the Registry takes a decision on its own to reject the papers. In all cases of

doubtful maintainability, the matter is heard by the Court and orders are passed. Hence, it makes no difference to the litigant whether the

proceeding bears a Diary Number or Stamp Register Number or a number which is assigned after it is taken on file. In this case also, the petitioner

has not suffered any prejudice by the petition not being registered and taken on file. We have heard him fully not only on the question of

maintainability but also its fitness for admission on a prima facie case being made out. We are of the view that this petition should be numbered for

two reasons:-

(1) This petition is directed not only against a Judge of this Court but also against the Advocate-Commissioner by name R. Subburam. There is no

question of a petition being not maintainable against him. In so far as he is concerned, the question will be whether a prima facie case is made out in

the affidavit for admission of the petition and issue of notice to him. (2) Secondly, this is the first time the question has arisen in this Court and being

an important one, it is heard by this Full Bench. This is a Court of Record and in order to make the papers in this proceeding a part of the record

of this Court for future reference and guidance, the petition must be taken on file. Hence, the Registry is hereby directed to number the Contempt

Petition and take it on file. This order will be the order in the said Contempt Petition.

6. In this case, the petition for review is not maintainable for the reason that the petitioner cannot be considered to be a person aggrieved. The

order directing Notice of Motion passed by the Bench in the Appeal on 20-12-1995 is an order in favour of the petitioner himself. He cannot

challenge that order by an application for review. There is no substance in the contention that instead of admitting the appeal, if the Court directs

Notice of Motion to be respondent, it can be considered to be an order against the appellant enabling him to challenge the same. Learned counsel

for the petitioner states that such an order would amount to disgrace or humiliation of the appellant. We have no hesitation to reject the said

contention as one without any substance. There is no question of any humiliation or disgrace in such cases to the concerned party.

7. We requested the counsel to argue not only on the question of maintainability but also on the merits of the application for review, as we did not

want to stand on technicalities. Learned counsel has contended that a right of appeal is available to the appellant in Clause 15 of the Letters Patent,

Order 36, Rule 11 of the Original Side Rules and Order 43, Rule 1 (r) of the Code of Civil Procedure. He has taken us through the said provisions

and contends that the relevant provisions have conferred a right of appeal and, therefore, the appellant is entitled to have the appeal admitted. It is

also his contention that the respondent cannot have a say in the matter of admission of the said appeal. It is submitted that the presence of the

respondent in such cases before the appeal is admitted is wholly uncalled for and not warranted by the prescribed procedure. In this connection he

has drawn our attention to Part I, Order 8 of the Supreme Court Rules, which deals with Notice of Motion in the Supreme Court.

8. The "Notice of Motion" dealt with in that Order is entirely of a different kind. There, the notice has to be served on the parties who will be

affected by the Motion before the Court is moved for grant of relief on the said application. That is not a case of notice being ordered by the Court

after the matter comes up for admission, before the Court. Even in such matters, Rule 2 of Order 8 of the Supreme Court Rules provides that

where the delay which might be caused by notice would or might entail serious hardship, the applicant may pray for an ad interim ex parte order in

the Notice of Motion, and the Court, if satisfied, upon affidavit or otherwise that the delay would entail serious hardship may make an order ex

parte upon such terms as to costs or otherwise, and subject to such undertaking being given, if any, as the Court may think just, pending orders on

the motion, after notice to the parties affected thereby. A similar provision was available under the Original Side Rules of the High Court, 1927.

Order 13, Rule 7 of the said Original Side Rules prescribes that certain applications shall be made in Court upon Notice of Motion. Rule 8

provided that the Notice of Motion shall be in Form No. 21. Rule 9 provided that each Notice of Motion shall be entered by the Registrar in a list,

and shall be called on and disposed of in manner prescribed by Rule 4 of that Order. When the Original Side Rules were amended in 1956, and

new Rules were framed, the said provision for Notice of Motion was omitted. Similarly, the amendment of Original Side Rules in 1994 does not

contain any provision for Notice of Motion.

9. However, the Notice of Motion which has been ordered by the Court in this appeal is of a different nature. When an appeal is posted before

Court for admission, it is open to the Court either to admit the appeal or dismiss the same in limine. A third course can also be adopted by the

Court by ordering Notice of Motion to the respondent mainly with a view to dispose of the appeal itself within a short time after hearing both sides.

Such a course is adopted generally when it is found that the scope of the matter involved in the appeal is very small and that the questions lie within

a short compass. In fact, when appeals arise against interlocutory orders such a course of ordering Notice of Motion is being freely adopted by

this Court in practice for more than two decades by now. That practice is not confined to proceedings under Article 226 of the Constitution of

India, but it has been adopted in all other matters also. It is well known that the Supreme Court of India is also adopting such a procedure of

ordering notice in applications for Special Leave against the orders of the High Courts even when such matters do not fall within the scope of

Order 8, of the Supreme Court Rules referred to earlier.

10. There is no substance in the contention of the counsel that the appellant has a right of appeal and, therefore, the Court is bound either to admit

the appeal or dismiss the same in limine. The right of appeal is not denied to the appellant by ordering Notice of Motion. The Court is only

accepting thereby that there is a prima facie case to be considered at the instance of the appellant and it is necessary to hear the respondent for

deciding the case satisfactorily. It is preposterous to contend that the appellant suffers humiliation or disgrace if the Court orders Notice of Motion

without admitting the appeal.

11. In *Tamil Nadu Civil Supplies Corporation Ltd. v. M/s. Ramaswami Rice Merchants, etc.* (1995-2-L.W. 473), a somewhat similar contention

was urged on behalf of the appellant therein. In fact, an extreme stand was taken by the counsel appearing in that matter that there was a right of

appeal under the provisions of Section 39 of the Arbitration Act and there was no question of posting the appeal for admission before the Court. It

was contended in that case that the appeal should be automatically admitted by the Registry and only the interlocutory application could be posted

before Court for orders. That contention was negated by the Division Bench, to which one of us was a party. The provisions contained in the

Letters Patent and the power of the High Court to regulate its procedure under Article 225 of the Constitution of India as well as the CPC and the

Rules of Practice were referred to in detail by the Bench and the contention of the appellant therein was negated.

12. The counsel who is appearing for the appellant in this case raised a similar contention with reference to the procedure to be adopted in a writ

petition, which gets posted for admission in *M. Ranka v. State of Tamil Nadu and others* (1990-1-L.W. 552). A Division Bench negated the

contention and held that the Rules did not prohibit the issue of Notice of Motion in a Writ Petition before admission. Learned counsel for the

appellant has contended that the procedure relating to a petition under Article 226 of the Constitution of India will not be applicable to appeals and

other proceedings governed by the Letters Patent, the CPC and the Original Side Rules. There is no merit in this contention.

13. When under Article 226 of the Constitution of India, this Court can resort to a procedure of ordering Notice of Motion, a fortiori it can do so

in matters governed by the Code of Civil Procedure, the Letters Patent, the Original Side Rules and the Appellate Side Rules. In fact, the inherent

power of the Court is well recognised by Section 151 of the Code of Civil Procedure. Even if there is an express provision relating to a procedural

matter, it does not fetter the power of the Court to pass a suitable order in any particular case. It is worthwhile referring to the following passage in

the judgment of the Supreme Court in *M/s.*

Ram Chand and Sons Sugar Mills Private Ltd. v. Kanhayalal Bhargava (AIR 1966 SC 1899) relating to the inherent powers of a Court as

recognised in Section 151 of the Code of Civil Procedure:-

The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be

exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the

other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that

no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are

imposed by construction on the provisions of S. 151 of the Code, they do not control the undoubted power of the Court conferred u/s 151 of the

Code to make a suitable order to prevent the abuse of the process of the Court.

14. It may also be pointed out that Article 225 of the Constitution of India preserves the power of the High Court to make Rules and to regulate its

procedure as it had before the commencement of the Constitution, and the Original Side Rules framed by this Court refer also to Clause 37 of the

Letters Patent and Article 225 of the Constitution of India.

15. There is no prohibition in the Original Side Rules or any other Rule against the Court ordering Notice of Motion in any case instead of granting

admission. As pointed out already, the purpose of ordering Notice of Motion is only to facilitate early disposal of the main case itself. It is a rule of

convenience, which is helpful mainly to the litigants and incidentally to the Court. After all, procedure is the handmaid of justice and in a case where

the Court calls upon the respondent with a view to hear him before granting any relief to the appellant, the latter cannot make a grievance thereof

and contend that the procedure adopted by the Court is not warranted by the Rules.

16. The petitioner's counsel has drawn our attention to paragraphs 4 and 5 of his application for review as of great importance. We do not find

any substance in either of the grounds. Not do we find any merit in any other ground in the Memorandum of Review Petition. In the result, we hold

that the petition for review is not maintainable and that there is no merit in the said petition. The petitioner cannot have any grievance whatever

against the order dated 20-12-1995 passed in the appeal directing Notice of Motion returnable on 18-1-1996. Following the reasoning of the Full

Bench referred to above, we direct the office to number this petition, as the non-maintainability of the petition is not due to want of jurisdiction. The

petition is dismissed.