Kanai Lal Sethi Vs Collector of Land Customs, Calcutta

Court: Calcutta High Court

Date of Decision: July 26, 1956

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: 60 CWN 1042

Hon'ble Judges: Chakravartti, C.J; Lahiri, J

Bench: Division Bench

Advocate: Anil Kumar Sinha and Samarendra Nath Dutta, for the Appellant;Binayak Nath Banerjee and Amiya Kumar Makherjee, for the Respondent

Final Decision: Dismissed

Judgement

Chakravartti, C.J.
The preliminary objection taken in this case on behalf of the respondent ought, in my opinion, to succeed. The

appellant"s application under Article 226 of the Constitution was rejected by Sinha, J., summarily. The order complained of before the learned

Judge was an order, imposing on the appellant a penalty of Rs. 40,000 for a violation of the Customs laws in the shape of aiding and abetting

transhipment of goods across the borders of India into Pakistan. The present appeal is against the summary rejection of the application under

Article 226.

2. Mr. Banerjee, who appears for the respondent, the Collector of Land Customs, Calcutta, contends that the appeal, as constituted, cannot be

proceeded with to any purpose, because no effective order can be made therein. He points out that according to the appellant"s own petition in the

Court below, he had preferred an appeal from the impugned order to the Central Board of Revenue and having failed there, made an application

for revision to the Central Government. Having failed there as well, he resorted to Article 226 of the Constitution and made the application out of

which the present appeal arises. Mr. Banerjee"s point was that the sole respondent in the present appeal was the Collector of Land Customs,

Calcutta, whose order was being challenged, but that order had been superseded by and had merged in the appellate order of the Central Board

of Revenue and the Board"s order had in turn been superseded by and had merged in the order of the Central Government. Neither the Central

Board of Revenue nor the Government of India had been impleaded as respondents Mr. Banerjee''s point was that if in those circumstances, a

direction was given to the Collector of Land Customs, Calcutta, to revise his order or to modify it in any way, he could not possibly carry out the

direction, inasmuch as there would be subsisting as binding upon him the appellate order of the Central Board of Revenue and the revisional order

of the Government of India. The Court, Mr. Banerjee submitted, should not and would not place an officer in that embarrassing position and also

would not make an order which was bound to prove infructuous.

3. In the form in which it was taken, Mr. Banerjee''s objection might not be wholly fatal, because the present appeal is from the summary objection

of the Appellant''s application. If it succeeded, the Court would only direct the issue of a Rule and the Appellant might at that stage apply for an

addition of parties. But it seems to me that there is another and a better ground upon which the respondent''s objection to the present appeal can

be founded. It is quite true that the existence of an alternative remedy is not an absolute bar to a recourse to Article 226 of the Constitution, but

this Court has always held that if a party has availed himself of the ordinary remedies provided for by a special Act, he cannot thereafter turn round

and begin once again from the bottom by challenging the original order under Article 226 of the Constitution. In the present case, the appellant

availed himself of the right of appeal given by the Land Customs Act and also availed himself of the right of revision given by the same Act. It

would be extraordinary if he would thereafter be allowed to renew his attack on the order of the Collector of Land Customs in another chain by

means of an application under Article 226 of the Constitution. In my view, a person affected by an order against which certain remedies are

provided by the ordinary law ought to make a choice at the initial point of time when he is free to go either way, namely, either along the path

chalked out in the Constitution or along the path chalked out in the relevant Act. If he makes his choice in favour of the remedies under the relevant

Act and takes advantage of them up to the last, he cannot be allowed to return to the point at which he began his journey and begin it again in

another direction along the line laid down in the Constitution. That is the view which this Court has always held and to that view I would adhere. It

must, however, be added that if the error or illegality occurred for the first time in the order or judgment of an appellate court and it is the appellate

court''s decision which is challenged on that ground, an application for a writ or order under Article 226 in respect of that decision shall lie.

4. It was contended by the learned Advocate on behalf of the appellant that his client''s appeal to the Central Board of Revenue was not an

effective appeal at all, inasmuch as he had not made the deposit required under the Act to support such an appeal. The point sought to be made

was that in fact the appellant had not taken advantage of the alternative remedy of an appeal, but had only made an abortive attempt to do so.

That, however, does not improve the appellant''s position, but, on the other hand, worsens it. He, by his own conduct, is shown to be a person

who betook himself to the alternative remedy, but having done so, would not then comply with the conditions which that remedy required him to

comply with. The matter does not rest even there. It is not, as if, having made an attempt to appeal to the Central Board of Revenue, the appellant

had stopped half-way and then elected to proceed by way of an application under Article 226. Having failed to achieve any success in the appeal,

by reason of his own failure to comply with even the preliminary conditions, he went onward and went further to the Government of India itself

and, therefore, it can by no means be said that he had not availed himself of the alternative remedies, but had abandoned them.

5. Our attention was drawn to a note of a judgment of the Bombay High Court where it appears to have been held that if a party made an

application against an order of the Custodian of Evacuee Property which had been passed within the jurisdiction of the Bombay High Court, the

application could not be thrown out on the ground that the applicant had thereafter gone up to the appellate authorities who had passed their

orders outside the Court''s jurisdiction. That decision, it seems to me, so far as its purport can be gathered from the brief report, has no bearing on

the question before us. All that was held by the learned Judges was that, as the application was constituted, it was an application directed against

an order made within the jurisdiction of the Court and, therefore, the Court had jurisdiction to deal with it, whatever the view it might have to take

afterwards on the merits and on the ground of its having been superseded by orders of higher authorities. Besides, it does not appear that there

was any defect of parties in that case. For the reasons given above, the preliminary objection succeeds. The appeal is, accordingly, dismissed with

costs--the hearing-fee being assessed at three gold mohurs.

Lahiri, J.

I agree.