S.P. Sharma Vs Punjab National Bank

Court: Delhi High Court

Date of Decision: Aug. 2, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 11
Constitution of India, 1950 â€" Article 226

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: S.K. Chaudhary and A.P. Shaunak, for the Appellant; P.K. Dhamija and R.P. Vats, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.
This appeal is directed against the impugned judgment dated 27.10.2006 endorsing the finding of the trial court dated

17.02.1996 whereby the suit of the plaintiff/appellant had been dismissed.

2. Briefly stated the factual matrix of the case is as follows:

(i) Appellant was working as a Manager with the respondent bank. A departmental enquiry was held against him on charges of misappropriation of

funds, abuse of official position, falsifying of record. Enquiry officer held him guilty; major punishment of dismissal was awarded to him.

(ii) plaintiff filed a suit for declaration seeking the following reliefs:

(a) the report of the Enquiry Officer be declared as null and void;

(b) his removal from services be quashed;

(c) he be reinstated.

(iii) Prior to the filing of the suit, the appellant had preferred a writ petition being No. CWP No. 4293/1993. The prayers sought were:

(a) For setting aside the impugned order dated 15.05.1992 dismissing the petitioner from service, quashing and setting aside the order dated

16.11.1992 passed by the appellate authority, order dated 22.07.1993 passed by Reviewing Authority rejecting his review petition.

(b) Further directions for reinstatement were sought along with consequential benefits.

(iv) While disposing of the said petition on 9.9.1993, the Division Bench of this Court had inter alia held as follows:

In our opinion principles of natural justice have been complied with. Petitioner was given adequate opportunities for filing a representation after the

receipt of the enquiry report. He had to file a representation by 28th March, 1992 but he chose not to do so. An order was passed by the

Disciplinary Authority on 15th May, 1992. It is contended by counsel for the petitioner that on 11th May, 1992, a representation was sent which

was received in the office of Disciplinary Authority on 13th May, 1992. It is possible that this representation may not have been brought to the

notice of the Disciplinary Authority but the Disciplinary Authority cannot be faulted for the simple reason that the representation had to be filled by

28th March, 1992 and was filed much later than that date. Be that as it may, the said representation has been dealt with on merits at length by the

Appellate Authority who has come to the conclusion that the serious and grave charges against the petitioner stand proved and principles of natural

justice had been complied with. We find no infirmity in the conclusion. Dismissed.

(v) A Review Petition had preferred against the said order which had also been dismissed on 2.11.1993. The relevant extract of the said order

inter alia reads as follows:

We do not find any error apparent from our order dated 9th September, 1993 whereby the writ petition of the petitioner was dismissed. No

ground for review has been made out. Learned Counsel seeks to reply upon a subsequent decision of the Supreme Court in the case of Managing

Director, ECIL, Hyderabad v. B. Karunakar and Ors. decided on 1st October, 1993. That decision inter alia lays down the principle that copy of

the Enquiry Report has to be given and representation considered by the Disciplinary Authority. We have held that copy of the Enquiry Report

was given to the petitioner in the present case but he chose not to file representation within time. Representation is alleged to have been received in

the office of the Disciplinary Authority two days before passing of his order and in any case that representation has been dealt with at length on

merits by the Appellate Authority. It is also contended by the learned Counsel that the Enquiry officer has found that the charges of forgery have

not proved and it is not open to the counsel to raise this contention, while arguing review application. We have upheld the conclusion of facts of the

Appellate Authority and we have not gone into the merits re-appreciating evidence. We find no merit in this application. Dismissed.

(vi) SLP against the orders of the High Court was also dismissed on 21.02.1994.

(vii) In view of this factual position, trial judge had framed the following preliminary issues in the suit:

(a) Whether the suit is barred under the general doctrine of res judicata?

(b) Whether the suit is not maintainable?

Both these issues were decided against the plaintiff and in favour of the defendant bank.

(viii) It was held that the allegations and averments in the writ petition and the suit were directly and substantially the same; relief claimed in both the

proceedings was the same. Bar of res judicata as contained in Section 11 of the CPC (hereinafter referred to as the "Code") was attracted. Suit

was dismissed.

(ix) On 27.10.2006, this decision of the trial court was endorsed by the first Appellate Court. It was contended before the first Appellate Court

that the investigation report had come to the knowledge of the appellant much after the enquiry; further while dismissing the Review Petition, the

High Court had categorically stated that it had not gone into the merits of appreciating evidence; doctrine of res judicata was thus inapplicable.

3. This is a second appeal. On 10.05.2007, the following substantial question of law was formulated:

Whether the suit filed herein before the court below is barred by the principle of res judicata?

4. The submissions propounded before the first Appellate Court have been reiterated here as well. It is further argued that the provisions of

Section 11 of the Code are not attracted in view of the fact that the writ petition was dismissed on 09.09.1993 without notice to the respondent;

proceedings were not contested; question of the matter having been heard and finally decided did not arise. Attention has been drawn to

explanation III of Section 11 of the Code; it is submitted that in the absence of notice to the respondent, the question of an admission of the facts

alleged or denied whether explicitly or implicitly did not arise. The doctrine was misapplied.

5. Counsel for the appellant has placed reliance upon a judgment of the Apex Court reported in Nawab Husain Vs. State of U.P., ., Defendant-

Respondent to substantiate the submission that it is only after a contest that the proceedings in the former suit can operate as res judicata in the

subsequent suit. For the same proposition reliance has also been placed upon State of U.P. Vs. Nawab Hussain, , wherein the Supreme Court had

stated that the wholesome rule of res judicata based upon public policy cannot be stretched too far to make it almost unworkable. Reliance has

also been placed upon AIR 1979 SC Hoshank Singh v. Union of India to support the submission that a writ petition dismissed in limine would not

constitute a bar of res judicata to the subsequent petition. Reliance upon Kirit Kumar Chaman Lal Kundaliya Vs. Union of India (UOI) and

Others, has been placed to support the submission that this doctrine is inapplicable to cases where the two forums have separate and independent

jurisdictions; applying this proposition it is submitted that the proceedings in the writ court and the proceedings in the subsequent suit were before

two independent forums which were having independent jurisdictions.

6. Respondent has countered these arguments. It is submitted that the Division Bench has passed a reasoned and speaking order after taking into

account the pleadings made in the writ petition as also the documents annexed thereto. The doctrine of res judicata had rightly and correctly been

applied by the two courts below.

7. To answer this proposition, it would be necessary to examine the pleadings in the writ petition, the orders passed therein as also the pleadings in

the subsequent suit proceedings and the relief claimed.

8. The writ petition was filed under Article 226 of the Constitution of India seeking a writ of mandamus/certiorari. The prayers made thereunder

have been aforenoted. This writ petition runs into 42 pages and the prayers are five in number. The body of the petition states that the orders

passed by the Enquiry Officer, endorsed by the Disciplinary Authority and thereafter by the Appellate and the Reviewing Authority are illegal for

the reason that they have violated the statutory regulations of the Punjab National Bank Officers Employees Regulations. Further, the Enquiry

Officer had not followed the rules of natural justice which has gravely prejudiced the case of the appellant. Along with the petition, the petitioner

had annexed various documents running from page- 44 to page 183 of the paper book. The questions of law raised in the petition find mention at

page 3 of the body of the petition.

9. It was on these pleadings that the order dated 9.9.1993 was passed. Although this order was passed on the first hearing and without notice to

the respondent yet a perusal of the order running into almost one page clearly shows that all grievances of the petitioner as contained in the writ

petition had been gone into and dealt with. His submission on the question of violation of the principles of natural justice had been specifically dealt

with. The Division Bench had noted that opportunity had been granted to the appellant to file his representation against the order of the Enquiry

Officer within a time span i.e. upto 28.03.1992 but the appellant had chosen not to comply with the directions. It had further noted that in spite of a

late representation made by the appellant which had reached the Disciplinary Authority only on 13.05.1992; yet the said representation had been

dealt with on merits at length by the Appellate Authority. Writ petition had accordingly been dismissed.

10. The Review Petition filed by the petitioner also ran into 50 pages. The grounds of review were contained on page 2. Along with the review

petition, documents running from page 53 to page 295 had been filed. Division Bench had reviewed its order on 2.11.1993. This order also ran

into almost one page.

11. It is in this factual context that the application of the rule of res judicata has to be appreciated. The judicial pronouncements available in this

regard also have to be appreciated.

12. In State of U.P. Vs. Nawab Hussain, , the Supreme Court had made the following observations:

If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend

on the nature of the order. If the order is on the merits, it would be a bar.

Applying this proposition in the light of the facts of the instant case it can safely and assuredly be said that the writ petition No. 4293 of 1993

although dismissed in limine on 9.9.1993 (without notice to the respondent) yet the order passed was clearly on the merits of the case. It was a

speaking and a vocal order. It had juxta-positioned the arguments of the petitioner and in the context of the pleadings made in the petition held that

there has been no violation of the principles of natural justice calling for any interference in the orders passed by the Enquiry Officer and the

subsequent hierarchy of the officers of the Department.

13. The further submission of the appellants that the observations of the review court while disposing the review petition on 2.11.1993 that: that we

have not gone into the merits of re-appreciating evidence clearly shows that the writ court had not gone into the merits of the evidence before the

appellate authority has little force. These observations of the Division Bench were made at the time when they were reviewing its earlier order

dated 9.09.1993; thereby necessarily meaning that on 9.09.1993 this exercise had already been concluded and the reviewing court was not

reviewing it again. As such, this vehement argument of the appellant does not in any manner come to his aid.

14. The examination and scrutiny of the pleadings filed in the writ petition and the pleadings in the suit show that they are by and large the same.

The parties are undisputably the same. The questions which had arisen both in the writ petition and in the subsequent suit related to the enquiry

proceedings initiated against the appellant and the legality/illegality of the orders passed by the Enquiry Officer, the Disciplinary Authority, the

Appellate Authority and the Reviewing Authority. The matters in issue were substantially and on the whole the same i.e. before the writ court and

in the suit.

15. In this scenario, the judgments relied upon by the learned Counsel for the appellant do not come to his aid.

16. The plea of constructive res judicata also applies to writ proceedings. In the Gulab Chand Case (supra) it was held by the Supreme Court.

This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to

take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is

founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would

be open to the party to take one proceeding after another and urge new grounds every time; and that, plainly, is inconsistent with considerations of

public policy to which we have just referred.

17. The appellant has already suffered two contentious litigations, burdening both himself and the Department. The first round lasted for five years

i.e. from the initiation of the enquiry proceedings upto the dismissal of his representation before the last hierarchical officer of the Department i.e.

the Reviewing Authority. Vide a speaking order passed on 9.9.1993 endorsed in the Review Petition by the Division Bench of this Court on

2.11.1993 which again was a speaking order; both of which had substantially and directly dealt with the same issues which were sought to be

subsequently contended by the appellant in the suit proceedings. The grievances of the appellant having been heard and gone into by the Division

Bench of this Court in the writ proceedings, it was no longer open for the appellant to agitate the same issue in the suit proceedings; bar of res

judicata was clearly applicable.

18. This doctrine is based on a principle of public policy; finality should be attached to binding pronouncements by courts of competent

jurisdiction; it is also based on the foundation that persons are not to be vexed twice over with the same kind of litigation. Courts below had rightly

held that this doctrine is applicable.

19. Substantial question of law is answered accordingly.

20. There is no merit in the appeal it is dismissed.

21. File be consigned to the Record Room.