

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3215 OF 2010

TERAPALLI DYVASAHATA KUMAR

Appellant(s)

VERSUS

S.M.KANTHA RAJU (DEAD) THR. LRS. & ANR.

Respondent(s)

J U D G M E N T

R.F. NARIMAN, J.

1) The present appeal arises out of a judgment of the Andhra Pradesh High Court dated 19.09.2006, in which it has construed Section 23 of the Andhra Pradesh Societies Registration Act, 2001, as referring only to the Principal District Court of the place where the society is registered. The correctness of this judgment is assailed before us by learned counsel appearing on behalf of the appellant.

2) Sometime in June, 2004, the appellant filed a petition under Section 23 of the Andhra Pradesh Societies Registration Act, 2001 in which it asked for the following reliefs:

"(a) For a declaration that none of the respondents, their men or agents have any legal right whatsoever to call, hold or organize the annual convention of the members of CBCNC (No.16/48-49) or conduct elections for the office bearers of CBCNC (No.16/48-49) or its various boards, at any place including at Kakinada or Visakhapatnam under any notification or in pursuance of the

notifications/pamphlets already passed/issued or proposed to be passed or issued either by themselves or through their nominees, privies etc;

- (b) For a consequential relief for permanent injunction restraining the respondents their men and agents, from proclaiming or projecting as Office bearers of CBCNC (No.16/48-49) or from organizing the annual convention of the members of the CBCNC (No.16/48-49) or election of office bearers of CBCNC (No.16/48-49) members or its various boards at any place including at Kakinada or Visakhapatnam under any notification or in pursuance of the notifications/pamphlets already passed/issued or proposed to be passed or issued either by themselves or through their nominees, privies etc:
- (c) To appoint an Advocate Commissioner for the purpose of holding an annual convention for all the members of the CBCNC (No.16/48-49), either in the month of January 2004 or immediately thereafter, as per the constitution and bye-laws of the CBCNC (No.16/48-49), and entrust the administration and management of all assets of CBCNC (No.16/48-49) to the office bearers so elected in the said elections, who shall be the rightful body to represent the CBCNC (No.16/48-49);
- (d) For Costs; and
- (e) For such other relief or reliefs as your Honourable Court deems fit and proper in the circumstances of the case."

3) A preliminary objection was raised by means of an I.A. being I.A. No. 234 of 2004 in which it was contended that the

petition filed at Visakhapatnam was filed in the wrong Court and hence was without jurisdiction.

4) The learned District Judge, by his judgment dated 17.01.2005, first observed that the expression "District Court" was not defined by the 2001 Act, and that this being so, he opined:

"Now, the law is well settled that when the special enactment did not specify the limits territorial jurisdiction of any Court prescribed under the said Act to entertain the litigation, the general provisions of C.P.C., regarding the said territorial jurisdiction, can be take into consideration. As can be seen from the A.P. Societies Act, it has not ousted the application of C.P.C., specifically. Therefore, when the Act is silent regarding the limits of territorial jurisdiction, and when the Act did not oust C.P.C., specifically, undoubtedly, the provisions of C.P.C., can be taken into consideration to decide the territorial jurisdiction of District Court concerned as envisaged U/sec.23 of the Act. Sec.20 C.P.C., envisages that the proceedings can be instituted in a Court within the local limits of whose jurisdiction, the cause of action wholly or in part arises. Therefore, the present petition can also be filed within the jurisdiction of the Court where a part of cause of action arose."

Having held this, the learned District Judge dismissed the preliminary objection.

5) A Revision Petition filed before the High Court was, however, allowed, and the judgment of the District Judge was

set aside by the High Court observing thus:

"On a comparative look at the expression used in the provisions of the A.P. Societies Registration Act, 2001 as already pointed out, a dispute as under Section 23 of the said Act has to be raised in the District Court concerned. Even though the District Court concerned in its comprehensive term bodily does not find place in the definition clause. However, it is to be noted that the expression "the Court" finds its place amongst definition clauses in the Section 2(d) to mean that principal civil Court of original jurisdiction. These two provisions have to be read together and gather not only the meaning but also the object. Thus, the Court having been specifically defined in the very same legislation it can only be looked on for the purpose of finding out the competent District Court as referred to under Section 23 of the said Act. It refers to that Principal Civil Court of original jurisdiction. The District Court or Principal Civil Court of original jurisdiction are one and the same and interchangeable expressions. The court of concerned can only be that it exists or created or formed and registered. Necessarily it means that the District Court of that place and not otherwise. It is needless to mention that the said legislation is a special enactment and therefore, the general principles as applicable could not be brought in and therefore, no reliance as such can be brought in, in respect of the various situations contemplated under Section 20 of the Code of Civil Procedure. The theory of part cause of action will not find place either to the facts of the case or very scope and object of the legislation under this Act. Hence,

it has to be necessarily held that it is only concerned District Court, where the society is registered that which will have jurisdiction to entertain any dispute under Section 23 of the said Act and not otherwise."

6) Learned counsel appearing on behalf of the appellant has placed before us the difference in phraseology between Section 23 of the 2001 Act and Section 13 of the Societies Registration Act, 1860. Further, he has argued that since this distinction has not been kept in mind, the judgment of the Division Bench is obviously incorrect and that of the District Judge is correct.

7) Learned counsel appearing on behalf of the respondents has, however, submitted before us that the question today is academic inasmuch as the prayers in the petition were confined to certain persons who are no longer relevant. Further, fresh elections have already taken place in the years 2007, 2012 and 2017 and, therefore, the appeal has become infructuous.

8) We are inclined to observe that what learned counsel for the respondents has argued before us is correct. However, in view of the recurring nature of the question that arises before us, it is important to settle the law once and for all for future guidance in cases like the present one.

9) Section 23 of the Andhra Pradesh Societies Registration Act, 2001, with which we are concerned, reads thus:

"23. Dispute regarding management:- In the event of any dispute arising among the Committee or the members of the society, in respect of any matter

relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, (Central Act 26 of 1996) or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.

10) It may be noted that this statute is a consolidating statute which applies to the whole of the State of Andhra Pradesh on and from 10.12.2001. Prior to this Act, the Societies Registration Act, 1860 applied to the Andhra Region of the State, whereas the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1940 applied to the Telangana Area. Section 11 of the 1940 Act is pari materia with Section 23 of the 2001 Act, and reads as under:-

"11. Dispute regarding management: - In the event of any dispute arising among the Managing Committee or the members of the Society in respect of any management or dissolution of the Society, any member of the Society may file an application in the District Court concerned, and the said Court shall after necessary inquiry pass such order as it shall deem fit."

11) On the other hand, Section 13 of the Societies Registration Act reads as under:-

"13. Provision for dissolution of Societies and adjustment of their affairs: - Any number not less than three-fifths of the members of any Society may determine that it shall be dissolved, and thereupon, it shall be dissolved forthwith, or at

the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the Society, its claims and liabilities, according to the rules of the said Society applicable thereto if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the Society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of the Society is situate, and the Court shall make such order in the matter as it shall deem requisite:

Provided that no Society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person or by proxy at a general meeting convened for the purpose:

Provided that whenever any Government is a member of, or a contributor to, or otherwise interested in any Society registered under this Act, such Society shall not be dissolved, without the consent of the Government of the State of registration."

12) It will be apparent that the scheme of the Societies Registration Act on the one hand, and that of the Andhra Pradesh (Telangana Area) Act and the consolidating Act of 2001 on the other is completely different. On the one hand, the 1860 Act refers the dispute that arises under Section 13 only to the Principal Court of original civil jurisdiction of the District in which the chief building of the Society is

situate. Under this Act therefore, jurisdiction is confined to one court and one court only: that is the principal court of original civil jurisdiction where the actual physical main building of the society is situate. On the other hand, Section 11 of the 1940 Act and Section 23 of the 2001 Act enable the person aggrieved to file an application in the "District Court concerned". It is this expression that has to be construed by this Court in the present case.

13) As the District Judge correctly states in the impugned judgment dated 17.01.2005, where the expression "District Court" is not defined by the special enactment in which it occurs, it must necessarily take with it all the trappings that go along with a District Court that is established under the general law. This would necessarily mean that the provisions applicable to District Courts generally would apply, and that therefore the provisions of the Code of Civil Procedure, when it comes to determining the jurisdiction of such District Court, would necessarily apply.

14) In fact, the said conclusion is in consonance with National Sewing Thread Co. Ltd. vs. James Chadwick & Bros. Ltd. [1953] SCR 1028. The question that arose before this Court was in the context of Section 76(1) of the Trade Marks Act, 1940 which provided an appeal from any decision of the Registrar to "the High Court having jurisdiction". This Court held that the Trade Marks Act does not provide for or lay down any procedure for the

conduct of an appeal in the High Court. This being so, this Court held:

"The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane L.C. in *National Telephone Co., Ltd. v. Postmaster-General* [1913] A.C. 546, in these terms : -

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches."

The same view was expressed by their Lordships of the Privy Council in *R.M.A.R.A. Adaikappa Chettiar V. Ra. Chandrasekhara Thevar* (1947) 74 I.A. 264, wherein it was said :-

"Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorized by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

Again in *Secretary of State for India v. Chellikani Rama Rao* (1916) I.L.R. 39 Madras 617, when dealing with the case under the Madras Forest Act their Lordships observed as follows : -

"It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships' opinion this objection is not well-founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the Civil Procedure Code apply."

Though the facts of the cases laying down the above rule were not exactly similar to the facts of the present case, the principle enunciated therein is one of general application and has an apposite application to the facts and circumstances of the present case. Section 76 of the Trade Marks Act confers a right of appeal to the High Court and says nothing more about it. That being so, the High Court being seized at such of the appellate jurisdiction conferred by section

76 it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes subject to appeal under clause 15 of the Letters Patent there being nothing to the contrary in the Trade Marks Act."

15) The same position obtains in the present case as Section 23 of the 2001 Act also does not provide for any procedure for the conduct of the application in the District Court concerned. This judgment would therefore apply on all fours to the facts in the present case. However, learned counsel for the respondent brought to our notice a judgment in Stridewell Leathers (P) Ltd. and Others vs. Bhankerpur Simbhaoli Beverages (P) Ltd., and Others, (1994) 1 SCC 34. The question for decision in the appeal before this Court was the meaning of the expression "the High Court" in Section 10-F of the Companies Act, 1956. The Companies Act defined "the Court" in Section 2(11) as follows:-

"(11) 'the Court' means,- (a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in Section 10."

and then went on to speak of "the court having

jurisdiction" in Section 10(1)(a) as follows:

10. Jurisdiction of Courts.- (1) The Court having jurisdiction under this Act shall be-
 (a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2)"

16) This being the case, this Court came to the conclusion that the High Court in Section 10-F means the High Court having jurisdiction in relation to the place at which the Registered Office of the Company concerned is situate, as indicated by Section 2(11) read with Section 10(1)(a) of the Companies Act.

17) This judgment would be relevant if the pari materia provision under Section 13 of the Societies Registration Act, 1860 had fallen for decision. As has been pointed out above, this provision gives only one court jurisdiction - the principal court of original civil jurisdiction of the District in which the chief building of the society is situate, somewhat like Section 10-F of the Companies Act. Inasmuch as this Section is completely distinct from Sections 23 of the 2001 Act and 11 of the earlier Telangana Act, it is clear that the

judgment in James Chadwick's case squarely applies to the present case, and not the aforesaid judgment.

18) In this view of the law, we set aside the judgment of the Andhra Pradesh High Court dated 19.09.2006. We must indicate that the impugned judgment is wrong on two counts. First, in applying the definition of "the Court" to "District Court" mentioned in Section 23, and then concluding that it would refer only to the principal Court of original jurisdiction of one particular place. It is also wrong in stating that as the 2001 Andhra Pradesh Act is a special enactment, general principles applicable under the Code of Civil Procedure would not apply, for the reasons given by us above.

19) The appeal is accordingly allowed.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
August 16, 2017.

ITEM NO.106

COURT NO.13

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3215/2010

TERAPALLI DYVASAHATA KUMAR

Appellant(s)

VERSUS

S.M.KANTHA RAJU (DEAD) THR. LRS. & ANR.

Respondent(s)

Date : 16-08-2017 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Appellant(s) Mr. Sridhar Potaraju, AOR
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Mr. K. Subba Rao, Adv.
Mr. Aniruddha P. Mayee, AOR

Mr. Abhay Pratap Singh, Adv.
Mr. Vipin Nair, AOR
Mr. P.B. Suresh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed reportable judgment.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable judgment is placed on the file)