

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8069 OF 2019

(Arising out of SLP (C) No.11852 of 2019)

M. Hariharasudhan

...Appellant

Versus

R. Karmegam and Ors.

...Respondents

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The instant appeal arises from the final judgment and order dated 29.03.2019 passed by the Madurai Bench of the High Court of Madras in A.S. (M.D.) No. 143 of 2018 allowing the appeal filed by the unsuccessful defendants in O.S. No. 186 of 2016 (the Respondents herein), wherein the suit for damages filed by the Appellant herein had been decreed by the First Additional District Judge, Madurai, vide order dated 03.04.2018.

3. The short question in this appeal is whether the suit for damages filed by the Appellant is maintainable in light of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 (in short “the Act”), which depends on whether the Act excludes the jurisdiction of the civil court. In this respect, the brief facts of the case as alleged by the Appellant are as follows:

3.1 The Appellant runs a hotel at Madurai. He had purchased a plot of land adjacent to a plot owned by his father, where he started construction in 2014. The Appellant’s father filed O.S. No. 783 of 2014 against Respondent No. 1 for the relief of injunction, since Respondent No. 1 had started putting up a construction in front of the Appellant’s property obstructing free access to the property of the Appellant’s father. Though an order for maintaining the status quo was passed in the said suit, Respondent No. 1 completed his construction regardless. Later, aggrieved by the filing of the suit, Respondent No. 1, along with some henchmen, damaged certain construction materials on the Appellant’s property, causing damage to the tune of Rs. 2.27 lacs. The Appellant resultantly lodged the first information before the police and a crime came to be registered against Respondent No. 1, who later further

damaged the show-case glass at the Appellant's hotel by pelting stones at it and damaged its automatic glass door by driving a car into the hotel. Respondent Nos. 2 and 3 trespassed into the hotel and took away cash of more than Rs. 1 lac. The Appellant spent Rs. 73,000/- on medical expenses for his injured employees, and subsequently filed O.S. No. 186 of 2016.

3.2 The Trial Court decreed the suit, i.e. O.S. No. 186 of 2016, holding that the Appellant was entitled to damages of Rs. 18,28,941/- with interest at the rate of 9% p.a. from the date of filing of the suit till the date of realization, with proportionate costs. The maintainability of the suit was not an issue before the Trial Court.

3.3 The High Court, in appeal, framed points for consideration with respect to the maintainability of the suit, non-joinder of necessary parties, and the accrual of the cause of action. Though it was held that the suit was not bad for non-joinder of necessary parties and was not prematurely filed, the decree was set aside solely based on the finding that the suit was not maintainable. The High Court found that there was no express bar on civil jurisdiction in the Act. However, it held that since the Act specified a particular method for claiming

compensation for damage to property in Sections 10 and 11 of the Act, as well as Rule 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Rules, 1994 (in short “the Rules”), all other methods for claiming compensation were excluded by implication, and thus the jurisdiction of the civil court was impliedly barred. Aggrieved, the Appellant filed the instant appeal.

4. Learned Senior Counsel Mr. V. Giri, appearing for the Appellant, argued that though the High Court had correctly held that there was no express bar on the jurisdiction of the civil court, it erred in holding that the Act impliedly ousted the jurisdiction of the civil court—in fact, the provisions thereof indicate that such jurisdiction exists concurrently with the remedies provided under the Act.

4.1 Learned Senior Counsel first referred to Section 7(4) of the Act, which provides that compensation ordered by the Court to be paid under Section 7 shall be accounted for at the time of awarding compensation in a subsequent civil suit relating to the same matter. He contended that Section 7(4) thus recognizes the possibility of a civil suit being filed, and thus impliedly recognizes the jurisdiction of the civil court to award compensation. He also submitted that the scheme of Section 7

was a near verbatim reproduction of Section 357 of the Code of Criminal Procedure, 1973 (in short the “Cr.P.C.”), which pertains to the power of a criminal court to order the payment of compensation, but also accounts for the filing of a subsequent civil suit for compensation.

4.2 Secondly, our attention was drawn to Section 14 of the Act, which saves proceedings instituted outside of the Act, to argue that the jurisdiction of the civil court was also saved under Section 14. Learned Senior Counsel stressed that ouster of the jurisdiction of the civil court is not to be readily inferred, referring to the decision of the Constitutional Bench of this Court in ***Dhulabhai v. State of Madhya Pradesh***, 1968 (3) SCR 662.

5. Learned Counsel for the Respondents, on the other hand, argued that the Act and Rules constituted a self-contained code and ousted the jurisdiction of the civil court by necessary implication. He submitted that the Rules create a specific authority for the determination and payment of compensation, and thus the decision in ***Dhulabhai*** (supra) would squarely apply, where it was also held that the jurisdiction of the civil court must be held to be excluded when there is an adequate and sufficient remedy specifically provided in a statute which would

normally be associated with actions in a civil court. He further argued that the scheme of the Act and Rules would be rendered redundant if the jurisdiction of the civil court to award compensation were to be recognized.

6. It has not been disputed that there is no express bar under the Act on the jurisdiction of the civil court to entertain a suit for damages. As set out above, all we need to determine is whether the jurisdiction of the civil court is barred by necessary implication. The principles laid down in ***Dhulabhai*** (supra) are pertinent in this regard. While dealing with the question of ouster of the jurisdiction of the civil court by specially constituted tribunals, this Court concluded that such ouster was not to be readily inferred unless the conditions set out by the Court were satisfied. For the purposes of determining the question before us, we need only refer to the following conditions laid down by this Court in ***Dhulabhai*** (supra):

“... (1) Where the statute gives a finality to the orders of the special Tribunals the civil courts’ jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the

particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

x x x

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”

(emphasis added)

6.1 Thus, essentially, we must determine whether the Act provides an adequate final remedy to what the civil court would normally do in a suit, such that the jurisdiction of the civil court must necessarily be inferred to have been ousted. The scheme of the Act and Rules must be examined in this light.

7. Section 1 of the Act deals with the short title and commencement, and Section 2 deals with definitions. Importantly, sub-section (4) defines “property” as any movable or immovable property or machinery owned by, or in possession of, or under the control of any person, including the

entities listed under clauses (a) to (j) of the sub-section, for instance, the Central and State Government, any local authority, and any institution, concern, or undertaking. Sections 3, 4 and 5 lay out offences punishable under the Act, while Section 6 pertains to the grant of bail.

7.1 Section 7, which is central to our controversy, merits reproduction:

“7. Order to Pay Compensation.—(1) When imposing a sentence of fine for an offence under this Act, the Court may when passing judgment, order the whole or any part of the fine recovered to be applied —

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment, to any person, of compensation for any loss or injury caused by the offence;

(c) in replacing or as the case may be, restoring to the previous state, the property including any road, bridge, navigable channel, natural or artificial.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.

(4) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

(5) Save as otherwise provided, when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the

person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

(emphasis added)

7.2 Evidently, Section 7(1) provides that where the Court trying any offence punishable under the Act imposes a sentence of fine after conviction, it may order such fine to be partly or wholly applied, inter alia, for the payment of compensation for any loss or injury caused by the offence, as mentioned in clause (b). Sub-section (5), at the same time, provides that if a Court is imposing a sentence under the Act comprising only imprisonment, the Court may order the accused to separately pay compensation to the aggrieved party.

7.2.1 It is relevant to note at this stage itself that Section 8 specifies that offences under the Act cannot be tried by any Court inferior to that of a Chief Metropolitan Magistrate or a Sessions Court.

7.2.2 As per Section 7(3), an order under Section 7, which would include orders both under sub-sections (1) and (5), may also be made by an Appellate Court or the High Court in the exercise of the power of revision. Most crucial, however, is sub-section (4), which specifically provides that in a subsequent

civil suit relating to the same matter, if the civil court is awarding compensation, it shall take into account any sum paid or recovered as compensation under Section 7 of the Act.

7.3 Moving on, Section 9 provides that notwithstanding anything contained in the Act, where an offence punishable under this Act has been committed during any procession, assembly, meeting, agitation, demonstration or any other activity organised by a political party or communal, language or ethnic group, the Court shall presume that the offence has also been committed by such party or group, which shall be liable to pay compensation for damage or loss caused to any property, in accordance with the provisions of this Act and the rules made thereunder.

7.4 Section 10(1) pertains to claims for compensation for damage and loss, which can be made by the person affected by the damage or loss, or by an officer empowered by any authority specified in clauses (a) to (j) of Section 2(4). Sub-section (2) provides that every application for claiming compensation shall be in such format as may be prescribed.

7.5 Section 11(1) provides that every claim for compensation for damage or loss caused to property shall be made to the authority as may be prescribed. Sub-section (2) provides the

factors to be considered by the prescribed authority while determining the quantum of compensation, and sub-section (3) provides that such authority shall have to follow prescribed procedure while deciding the application. Sub-section (4) gives the prescribed authority the powers of a civil court as provided in the Code of Civil Procedure, 1908 (in short “the CPC”) for the purpose of taking evidence on oath, enforcing the attendance of witnesses, discovery and production of documents and material objects, and for such other purposes as may be prescribed.

7.6 Section 12 of the Act provides that the prescribed authority under Section 11 may, after determining the compensation to be awarded, issue a certificate for the amount to the Collector, who shall recover the same in the same manner as an arrear of land revenue. Section 12-A deals with the manner of appeal against an order under Section 11, providing that an appeal may be made to such authority as may be prescribed. Sub-section (2) specifically provides that the decision of the appellate authority shall be final and shall not be called into question in any Court of law. Section 13 confers power on the State Government to make rules under the Act.

7.7 Section 14 is the savings provision. Since much revolves around this provision as well, we reproduce it below:

“14. Saving.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force and nothing contained herein shall exempt any person from any proceeding by way of investigation or otherwise which might, apart from this Act, be instituted against him.”

7.8 Section 15, the last provision of the Act, repeals the Tamil Nadu Public Property (Prevention of Destruction and Loss) Act, 1982.

8. The Rules have been framed by the State Government in the exercise of powers under Section 13 of the Act. Rule 3 lays down who may claim compensation for damage or loss to property owned by, or in the possession or under the control of, an authority specified in clauses (a) to (j) of Section 2(4), and in what manner. Importantly, Rule 4 sets out the Commissioner for Revenue Administration, or any authority authorised by him, as competent to decide compensation claims made under Rule 3. Sub-rule (2) provides that the decision of the competent authority as to the quantum of compensation for damage or loss caused to public property shall be final and not be questioned in any Court of law. Sub-rule (3) lays down certain

additional factors to be considered while determining compensation for damage or loss caused to public property.

8.1 Rules 5 to 10 deal with various aspects of the procedure of inquiry, including rectification of defects, filing of the written statement, notice to parties, issue of summons, and the appearance of legal practitioners if required. Rule 11 gives the power to the inquiring authority to inspect the damaged property, while Rule 12 allows the production of damaged movable property before the authority. Rule 13 deals with travel expenses of the inquiring authority. Rule 14 provides for the summary examination of any person required. Rule 15 states that the inquiring authority has to get recorded a memorandum of the substance of the evidence of each witness. Rule 16 provides that the inquiring authority may take assistance from persons having special knowledge with respect to any matter relevant to the inquiry. Rules 17 to 19 require the inquiring authority to frame a record of points to be decided, maintain a brief diary of the proceedings of the inquiry, and record his findings concisely on each point and record reasons for such findings. Rule 20, pertaining to the application of the CPC, was omitted by G.O. Ms. No. 1285, Home (Court IV), dated

24.10.1994. Rule 21, the last rule, deals with the manner of recovery of compensation.

9. Additionally, it is important to note that the Act, which was enacted in 1992, initially only pertained to damage and loss caused to public property. The Act was amended vide the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1994, which was published in the Tamil Nadu Government Gazette Extraordinary on 09.08.1994, to provide compensation in respect of property other than public property as well. The Rules framed under the Act came into force on 09.04.1994, that is to say, prior to the amendment of the Act. Though certain amendments were subsequently made to the Rules, vide G.O. Ms. No. 1285, Home (Court IV) dated 24.10.1994, it appears that the State Government has committed an oversight in amending the Rules, and has failed to provide any procedure for the claiming and assessment of damages with respect to property other than public property. For instance, as already discussed, Rule 3, which prescribes the authority to claim compensation, continues to deal only with applications for compensation with respect to public property. Similarly, Rule 4(1), which prescribes the authority before whom compensation is to be claimed, does not clarify as to before

whom an application should be made to claim damages for loss caused to private property. At the same time, Rule 4(2) states that the assessment of compensation for damage or loss caused to public property shall be final, without any mention of the fate of damages with respect to private property. So also, Rule 4(3) takes care of the assessment of compensation for damage or loss caused to public property, and does not deal with how damages are to be assessed in case of private property. A bare reading of the Rules in their entirety thus makes it clear that the State Government has committed an oversight in amending the Rules appropriately to bring them in consonance with the amended enactment, and to facilitate the appropriate enforcement of the same.

10. However, even if we assume that the Rules broadly provide a procedure to claim compensation for damage or loss to public as well as private property, we find force in the contention of learned Senior Counsel for the Appellant that the scheme of the Act does not envisage ouster of jurisdiction of the civil court.

11. As mentioned supra, reading the Rules expansively, not literally, it is evident that the Act, along with the Rules, provides for the award of compensation in two ways. Firstly, it

may be awarded at the end of the trial for any offence punishable under the Act, or may be ordered to be paid out of the fine imposed upon the accused. This is similar to the power of the criminal court to award compensation under Section 357 of the Cr.P.C. Secondly, compensation may be awarded upon an application as envisaged under Section 10, after a summary inquiry as envisaged under the Rules. This is somewhat similar to the summary procedure envisaged under the Consumer Protection Act, 1986 (in short “the 1986 Act”), for claiming compensation thereunder. This would indicate that the Act and Rules provide a specific remedy to claim compensation for loss and damage to property. It was on this basis that learned Counsel for the Respondents submitted that the civil court could not be said to have concurrent jurisdiction to decide a suit for damages.

12. Such an argument, however, deserves to be rejected. We first turn our attention to the aspect of award or provision of compensation by the criminal court under Section 7 after trial for any offence under the Act. It is evident that the provision clearly recognises the possibility of a civil suit instituted subsequent to the criminal proceedings under the Act, relating to the same matter, where if the Court trying the civil suit is

awarding compensation, it is required to take into account any sum paid or recovered as compensation under Section 7 of the Act. It does not stand to reason that the Act would permit the subsequent filing of a civil suit while excluding the concurrent jurisdiction of the civil court.

13. Moreover, even the summary remedy of claiming compensation envisaged under Section 10 of the Act, read with the Rules, does not preclude the filing of a suit for damages. Section 14 of the Act is important in this regard, which clearly provides that the Act is in addition to, and not in derogation of, any other law in force for the time being. It further mandates that nothing contained in the Act shall exempt any person from any proceeding by way of investigation or otherwise which might be instituted against him apart from under the Act. "Law" in force would include the common law, under which the tortious remedy of damages may be claimed, which remedy can only be pursued in a civil court. Thus, it is evident that the Act, by way of Section 14, clearly recognises the concurrent jurisdiction of the civil court to entertain a suit for damages.

14. In this regard, it would be useful to refer to Section 3 of the 1986 Act, similar to Section 14 of the Act, which provides

that the 1986 Act is in addition to and not in derogation of other laws in force:

“3. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

14.1 This provision has been considered on a multitude of occasions by this Court to affirm that the remedy available before consumer fora may only be one of several concurrent remedies available to an aggrieved person. For instance, even recently, this Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India*** (W.P. (C) No. 43/2019, decided on 09.08.2019) observed that remedies to flat allottees under various statutes such as the 1986 Act, the Real Estate (Regulation and Development) Act, 2016, and the Insolvency and Bankruptcy Code, 2016 are concurrent. However, for our purposes, we may limit ourselves to examine the effect of Section 3 of the 1986 Act on the jurisdiction of the civil court. The following discussion in ***State of Karnataka v. Vishwabharathi House Building Coop. Society***, (2003) 2 SCC 412, serves us adequately, where this Court explained that the 1986 Act does not supplant the jurisdiction of the civil court:

“46. By reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities.

X X X

53. ... Furthermore, primarily the jurisdiction of the forums/Commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes.”

(emphasis added)

14.2 We may also refer to the following observations made by this Court in its earlier decision in ***Indian Medical Association v. V.P. Shantha***, (1995) 6 SCC 651, where, while concluding that consumer fora were competent to deal with complaints regarding deficiency in service by way of medical negligence, it was observed as follows:

“37. ... In complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the civil court for appropriate relief. Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the civil court for necessary relief...”

(emphasis added)

14.3 There is no doubt in our minds that a similar proposition holds the field even with respect to the Act at hand. Section 14 of the Act, being in addition to and not in derogation of the provisions of other laws in force, permits an aggrieved person to approach the civil court for relief if he so desires, instead of availing of the remedy envisaged under Section 10 of the Act. Clearly, a claim for compensation under the Act is only in the nature of an additional remedy which may be pursued in place of filing a civil suit for the same relief.

15. Moreover, it is clear that since a claim for compensation under Section 10 may only be determined by way of summary proceedings, it does not stand as a complete substitute to the remedies that may be pursued in a civil court and determined through a full-fledged trial, even though certain powers of the civil court are conferred upon the prescribed authority determining a claim for compensation under the Act.

16. Upon an evaluation of the entire scheme of the Act and Rules, and looking to the tests laid down by ***Dhulabhai*** (supra), we are thus of the considered opinion that the Act does not stand in place of and preclude a claim for damages under the common law as may fall for determination before a civil court in a civil suit. In this view of the matter, we find ourselves drawn

to the irresistible conclusion that the Act does not oust the jurisdiction of the civil court either expressly or by necessary implication, and that the High Court has erred in allowing the appeal filed by the Respondents herein by holding that the suit filed by the Appellant was not maintainable.

17. As mentioned supra, the Trial Court, upon holding that the suit is maintainable, proceeded to decree the suit on merits. The appeal before the High Court, filed under Section 96 of the CPC, was decided only on the preliminary point pertaining to the maintainability of the suit. In view of our finding that the suit is maintainable, the matter has to be remitted to the High Court for hearing the first appeal on merits.

18. Accordingly, the appeal is allowed, and consequently, the judgment of the High Court is set aside. The matter is remitted to the High Court for deciding the first appeal being A.S. (MD) No. 143 of 2018 on merits.

.....J.
(Mohan M. Shantanagoudar)

.....J.
(Ajay Rastogi)

**New Delhi;
October 17, 2019.**