

The State of Bombay and Others

Vs

The Lasalgaon Merchant's Co-Operative Bank Ltd. and Others

Civil Appeal No. 2378 of 1966

(G. K. Mitter, A. N. Ray JJ)

01.02.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the judgment, dated April 7, 1966 of the Bombay High Court refusing to grant certificate to appeal.
2. The respondent filed a suit inter alia against the State of Bombay, the Collector of Nasik, the Mamlatdar of Niphad, Circle Officer of District Nasik and the Union of India and claimed a decree for Rs. 3,181/- interest and costs.
3. The respondent a co-operative bank had certain transactions with the respondent's firm of Prabhudas Hathibhai and certain goods of the firm were pledged with the respondent bank. The Income-tax Officer, Nasik issued a certificate of recovery under Section 46 of the Income Tax Act, 1922 against the properties of the respondent firm. The Circle Officer attached the goods pledged with the respondent bank. Thereafter the Circle Officer upon protest by the respondent bank called upon the bank to take delivery of the goods attached. The respondent bank found that the goods were damaged while in the custody of the Government of Bombay. The respondent bank alleged that the attachment was illegal and the State was responsible for loss or damage.
4. The suit was tried by the Civil Judge, Nasik. A decree for Rs. 3,455 was passed with interest and other reliefs. It was ordered that the State of Bombay shall pay Rs. 875/- out of the said amount to the respondent bank.
5. The respondent bank preferred an appeal. The District Court held that the attachment was illegal and wrongful and held that the respondent bank will be entitled to claim damages. The District Court found that the Circle Officer would be liable for wrongful attachment, but the Circle Officer was protected under Section 6 of the Bombay Rent Jurisdiction Act. The District Court held that the State was not liable for tort. The District Court dismissed the appeal and confirmed the decree.
6. The respondent bank preferred an appeal. The Bombay High Court by judgment, dated March 15 and 16, 1965 allowed the appeal and held that the attachment was illegal, unwarranted and unjustified because the Government had no priority over the bank in respect of dues and passed a decree against all the defendants. Defendants Nos. 5, 7 and 9 were not liable for costs. The State of Bombay applied for admission of appeal under the Letters Patent which was rejected by an order, dated April 7, 1966. Thereafter the appellant filed a petition for special leave to appeal which was granted. The present appeal is against the order of the Bombay High Court, dated April 7, 1966

rejecting the Letters Patent appeal filed by the State of Bombay.

7. Counsel on behalf of the respondent contended that the appeal by the State of Bombay would be a prolonged litigation. That is not a ground for refusing admission of a Letters Patent appeal. Ordinarily, exercise of jurisdiction by the High Court is not disturbed. Where however it appears that there are important decisions or rulings which should be taken into consideration, it would be proper to admit such Letters Patent appeals and hear the same on merits.

8. There is a decision of this Court in *Kasturilal Relia Ram Jain v. The State of Uttar Pradesh* ((1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 SCJ 318.) which has a very important bearing on this subject of liability of the State for the alleged cause of action.

9. It is apparent that the appeal should have been heard by the Bombay High Court, because there are important questions of public importance and of law.

10. The appeal is therefore allowed. The order of the High Court rejecting the admission of the Letters Patent appeal is set aside. The High Court will admit the appeal and hear the same as expeditiously as possible in view of the fact that this is an old litigation. Costs of this appeal are left to be dealt with by the High Court at the time of disposal of the appeal to be heard.

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