

MANAGING DIRECTOR, ETC.

A

v.

K. RAMACHANDRA NAIDU AND ANR.

SEPTEMBER 15, 1994

[M.N. VENKATACHALIAH, CJ. AND DR. A.S. ANAND, J.]

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Motor Vehicles Act. 1939 :

Section 68(d)—Scheme of nationalisation—Quash by Single Judge of the High Court—Appeal by parties—State's appeal dismissed by Division Bench declining to condone the delay—Appeal by one of the parties within time dismissed as barred by res judicata—Held not barred by res judicata—Matter remitted back to High Court for fresh disposal on merits.

C

Code of Civil Procedure, 1908 :

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Section 11—Res judicata—Appeal by State and the other party—State's appeal time-barred—Delay not condoned and appeal dismissed—Other appeal filed in time by other party also dismissed as barred by res judicata—Held not barred by res judicata—Matter remitted back to High Court for disposing it on merits.

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The first respondent, a private transport operator filed a Writ Petition before the High Court seeking quashing of the scheme of nationalisation approved under s.68(d) of the Motor Vehicles Act, 1939. The Single Judge, who heard the matter held that the first respondent was entitled to have his renewal application considered. The appellant, who was impleaded as 3rd respondent in the Writ Petition preferred an appeal before the Division Bench of the High Court. While this appeal was within the period of limitation, the appeal preferred by the State was beyond the period of limitation. The Division Bench dismissed the State appeal, declining to condone the delay. The appellant's appeal was dismissed on the sole ground that since the appeal by the State was already dismissed it was not maintainable as it was barred by the principle of *res judicata*. Challenging the said order, appellant preferred the present appeal.

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Allowing the appeal and setting aside the High Court's order, this Court

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A HELD : 1. The State as well as the appellant were respondents in one and the same Writ Petition, against the decision of which they had filed separate appeals. The dismissal of the Writ Appeal filed by the State on the ground of delay not being condoned could not in law affect the maintainability of the Writ Appeal which had been filed by the appellant within time and was pending final hearing in the High Court. Thus the B High Court erred in holding that the appeal filed by the appellant was not maintainable being barred by *res judicata*. [586-B, C, 587-F]

Sheodan Singh v. Daryao Kumar, AIR (1966) SC 1332, distinguished.

C *Narhari and Others v. Shanker and others*, AIR (1953) SC 419, relied on and applied.

2. Since the Writ Appeal filed by the appellant, within time, had been admitted and was pending hearing, it would have been more appropriate for the High Court to give the benefit of Section 5 of the Limitation Act and condone the delay in filing the appeal by the State and heard both the D appeals together on merits. However, since the State has not come up in appeal nothing more requires to be said. [587-G]

E 3. Since the High Court dismissed the appeal as not maintainable, without going into the merits of the case, it is remitted back to the High Court for a fresh disposal on merits in accordance with law. It shall be open to the parties to raise all such pleas as are available to them in law in respect of their respective claims before the High Court during the hearing of the appeals. The High Court is requested to dispose of the Writ Appeal expeditiously and as far as possible within three months.

F [587-H, 588-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6063 of 1994.

G From the Judgment and Order dated 19.9.89 of the Madras High Court in W.A. No. 675 of 1982.

A.V. Rangam and A. Ranganathan for the Appellants.

A.T.M. Sampath for the Respondents.

H The Judgment of the Court was delivered by

DR. ANAND, J. Leave granted.

This appeal is directed against the judgment of the High Court of Madras dated 19.9.1989 dismissing appellant's Writ Appeal No. 675/82.

The first respondent, a private transport operator in the State of Andhra Pradesh who at the material time was operating his stage carriage on the inter-state route Chittoor (in Andhra Pradesh) to Salem (in Tamil Nadu), filed Writ Petition No. 4343 of 1980 in the High Court of Madras seeking quashing of the scheme of nationalisation approved under Section 68(d) of the Motor Vehicles Act, 1939 as published in G.O.Ms. No. 579 Home dated 7.4.1975 and for certain other reliefs. The learned Single Judge of the High Court allowed the Writ Petition holding *inter alia* that the entire scheme as approved, was inconsistent and not capable of implementation and that the writ petitioner (1st respondent herein) was entitled to have his renewal application considered on the said basis. The appellant who had been impleaded as the 3rd respondent in the Writ Petition, filed Writ Appeal No. 675/82 within the period of limitation. The State of Tamil Nadu, also a respondent in the Writ Petition, filed a separate Writ Appeal but beyond 150 days of the period of limitation, alongwith an application seeking condonation of delay in preferring the appeal. While notice was issued on the Writ Appeal filed by the State notice was issued in the condone delay application. On 4.3.1986 a Division Bench of the High Court, declined to condone the delay and dismissed the appeal filed by the State. When the Writ Appeal filed by the appellant came up for hearing before the Division Bench, the same was dismissed on the sole ground that since the Writ Appeal filed by the State had already been dismissed by the Division Bench, the Writ Appeal filed by the appellant was barred by the principle of *res judicata* and was as such not maintainable. Reliance was placed by the Division Bench upon the judgment in *Sheodan Singh v. Daryao Kumar*, AIR (1966) SC 1332.

In our opinion, the view taken by the High Court is not sustainable and the reliance placed by it on *Sheodan's* case (*supra*) is misplaced.

In *Sheodan's* case (*supra*) the facts were entirely different. In that case the Trial Court had decided common issue relating to title which was a common issue in four different suits. Four separate decrees had been

A prepared. Two of the appeals, arising out of two suits, were dismissed on a preliminary ground with the result that the decrees in those two suits became final. In the two appeals filed subsequently, the earlier order dismissing the two appeals was held to operate as *res judicata* and the two subsequent appeals were accordingly dismissed.

B In the present case the factual and legal situation is entirely different. The State as well as the appellant were respondents in one and the same Writ Petition, against the decision of which they had filed separate appeals. The dismissal of the Writ Appeal filed by the State on the ground of delay not being condone could not in law affect the maintainability of the Writ Appeal which had been filed by the appellant within time and was pending final hearing in the High Court. The order in the writ petition could have been challenged by one appeal only unlike in *Sheodan Singh's* case where four appeals were required to be filed in law against the four decrees even though deciding the common issue relating to title. We cannot, therefore, subscribe to the view of the High Court that the dismissal of State's appeal, in the facts and circumstances of the case could operate as *res judicata* and bar the maintainability of the appeal filed by the appellant.

E In *Narhari and others v. Shankar and others*, AIR (1953) SC, 419 on the suit of the plaintiff being decreed in the Trial Court, two separate appeals were taken by *two set* of defendants. The Appellate Court allowed both the appeals and dismissed the plaintiff's suit by one judgment and ordered a copy of the judgment to be placed on the file of the connected appeal. The plaintiffs preferred two separate appeals. One of the appeal was held time barred and invoking the principle of *res judicata* the High Court dismissed the other appeal also. Reversing the decision of the High Court, this Court observed:

G "The question of *res judicata* arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of *res judicata* does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principal of *res judicata*. The same judgment

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cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one." A

It is relevant to notice here that in *Sheodan's case* (supra), the Bench considered the judgment in *Narhari's case* (supra) and pointed out the distinguishing features in the two cases. This Court referring to *Narhari's case* (supra) observed : B

"That case however has no application to the facts of the present case, because there the suit was only one which was followed by two appeals. The appeals were heard together and disposed of by the same judgment though separate decrees were prepared. An appeal was taken against one of the decrees. In those circumstances this Court held that *as there was only one suit, it was not necessary to file two separate appeals and the fact that one of the appeals was time-barred did not affect the maintainability of the other appeal and the question of res judicata did not at all arise*. In the present case there were different suits from which different appeals had to be filed. The High Court's decisions in the two appeals arising from suits Nos. 77 and 91 was undoubtedly earlier and therefore the condition in a former suit to give rise to *res judicata* in a subsequent suit was satisfied in the present case." C D E
(Emphasis supplied).

The law laid down in *Narhari's case* (supra) squarely applies to the facts to the present case and the High Court, therefore, fell in error to hold that the appeal filed by the appellant was not maintainable being barred by *res judicata*. F

We are also of the opinion that since the Writ Appeal filed by the appellant, within time, had been admitted and was pending hearing, it would have been more appropriate for the High Court to give the benefit of Section 5 of the Limitation Act and condone the delay in filing the appeal by the State and heard both the appeals, together, on merits. However, since the State has not come up in appeal, we may say nothing more regarding the same. G

Since, the High Court dismissed the appeal as not maintainable, H

- A** without going into the merits of the case, we set it aside and remit the case back to the High Court for a fresh disposal of the appeal on merits in accordance with law. It shall be open to the parties to raise all such pleas as are available to them in law in respect of their respective claims before the High Court during the hearing of the appeals. We request the High
- B** Court to dispose of the Writ Appeal expeditiously and as far as possible within three months from the date of receipt of the copy of this order.

G.N.

Appeal allowed.