

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.5811/2009****M/S.NATH SEEDS LTD.****Appellant(s)****VERSUS****REGIONAL DIRECTOR E.S.I. CORPORATION****Respondent(s)****O R D E R**

The Employees State Insurance Corporation/respondent sought to cover the offices of the appellant under the Employees State Insurance Act, 1948. The appellant invoked the jurisdiction of the Employees Insurance Court at Hyderabad under Section 75 of the said Act, *inter alia*, on the ground that the appellant was not liable to be so covered on account of the fact that the number of employees working in different parts of Andhra Pradesh offices of the appellant were sought to be clubbed with the number of employees working in Hyderabad (which numbered only 15). The various establishments in Andhra Pradesh were in implemented area though the head office of the appellant was located in Aurangabad, in a non-implemented area. We may note that as per the respondent, the control vests with the Hyderabad office and that is why they seek to cover the establishment.

The employees Insurance Court, however, opined against the appellant vide order dated 12.4.1994. The appellant thereafter preferred an appeal before the appellate authority being the learned Single Judge of the then Andhra Pradesh High Court, but the same did not find any favour in terms of the impugned order dated

07.10.1999.

The appellant then ventured to file an LPA which came up before the Division Bench. Then the following order was passed:

“When the matter is taken up for consideration, both the learned counsel submitted that the subject matter of appeal is squarely covered by the decision of the Larger Bench of this Court in *United India Insurance Co., Ltd., Palmaner Branch, Tirupathi v. S. Surya Prakash Eddy and Others*, wherein it was held that Letters Patent Appeal is not maintainable against the Judgment rendered by a Single Bench in an Appeal arising out of a Special enactment.”

In the present appeal filed against the said order, the primary contention of the appellant is that the substitution of Section 100A of the Code of Civil Procedure, 1908 would have only prospective effect i.e. from 01.07.2002 and thus, the appeal filed by the appellant was maintainable before the Division Bench. It is canvassed before us by learned counsel for the appellant that this issue is no more *res integra* in view of the judgment of this Court in *Kamala Devi v. Kushal Kanwar & Anr.* -(2006) 13 SCC 295 and the natural consequence should be to remit the matter for reconsideration by the Division Bench of now what is known as Andhra Pradesh High Court.

Learned counsel for the respondent articulately sought to oppose the appeal.

The first aspect which is sought to emphasize is that the impugned order was really an order on concession and it is not the

case of the appellant that he did not make the concession. Thus, even if appeal was maintainable, the appellant had given up the right. We are unable to persuade ourselves to agree with this for the reason that the order is in a phraseology reflecting the given legal position rather than really amounting to a concession by the appellant. If at all, it only sought to recognize as a legal principle enunciated in the judgment cited in the impugned order which was of a Larger Bench of that Court. The legal position is quite clear in view of the judgment in *Kamala Devi (supra)* and does not need further elucidation.

The second aspect learned counsel seeks to emphasize is based on Clause 16(b) being a Repeal and Savings Clause of the Code of Civil Procedure (Amendment) Act, 2002 which reads as under:

“16. Repeal and savings-(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 (10 of 1987), -

(a) the provisions of section 102 of the principal Act as substituted by section 5 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of section 5; and every such appeal shall be disposed of as if section 5 had not come into force;

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be,

inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure(Amendment) Act, 1999 and section 7 of this Act;

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act.”

It is the submission of the learned counsel for the respondent that the Legislature itself has taken care to protect the earlier proceedings and has stated that provision will not apply to such of the appeals which have been admitted prior to the commencement of the Amending Act.

In our view, this would require us to revisit the judgment in *Kamala Devi(supra)* as it was contention of the learned counsel that the aforesaid provision of the repeal Act was not brought to the notice of the Bench and even the other judgment passed were more in the nature of orders. On consideration of the aforesaid issue, we do not consider it a case for being revisited in view of the submission of the learned counsel for the respondent as the discussion in *kamala Devi (supra)* clearly recognizes the right of appeal as a valuable right.

The last endeavour made by learned counsel is to persuade us to discuss the merits of the contention itself on facts as it was his submission that remitting the matter back once again would prolong the exercise.

That dispute has gone through a prolonged exercise, we have no doubt. The matter has spent a decade in the records of this Court alone. The only issue was of right of appeal. But then we cannot blame the appellant for the same. There are aspects, even on merits, which may require examination by the Division Bench specifically in view of the plea of the appellant on merits recorded by us aforesaid and the rebuttal of the same by the respondent.

Much as we loath to prolong the matter, we have no option but to remit this matter back for consideration by the Division Bench of the Andhra Pradesh High Court at an as early date as possible considering the age of the matter.

The appeal is allowed in the aforesaid terms.

Parties to bear their own costs.

..... J.

[SANJAY KISHAN KAUL]

..... J.

[K.M. JOSEPH]

NEW DELHI;

AUGUST 14, 2019.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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VERSUS

REGIONAL DIRECTOR E.S.I. CORPORATION

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(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897 (10 of 1987),-

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(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil

Procedure (Amendment) Act, 1999 (46 of 1999) and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of section 16 of the Code of Civil Procedure(Amendment) Act, 1999 and section 7 of this Act;

(c) the provisions of rule 1 of Order XX of the First Schedule as amended by section 13 of this Act shall not apply to a case where the hearing of the case had concluded before the commencement of section 13 of this Act."

It is the submission of the learned counsel for the respondent that the Legislature itself has taken care to protect the earlier proceedings and has stated that provision will not apply to such of the appeals which have been admitted prior to the commencement of the Amending Act.

In our view, this would require us to revisit the judgment in *Kamala Devi(supra)* as it was contention of the learned counsel that the aforesaid provision of the repeal Act was not brought to the notice of the Bench and even the other judgment passed were more in the nature of orders. On consideration of the aforesaid issue, we do not consider it a case for being revisited in view of the submission of the learned counsel for the respondent as the discussion in *kamala Devi (supra)* clearly recognizes the right of appeal as a valuable right.

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..... J.

[SANJAY KISHAN KAUL]

..... J.

[K.M. JOSEPH]

NEW DELHI;

AUGUST 14, 2019.

ITEM NO.105

COURT NO.9

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). 5811/2009

M/S.NATH SEEDS LTD.

Appellant(s)

VERSUS

REGIONAL DIRECTOR E.S.I. CORPORATION

Respondent(s)

Date : 14-08-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPHFor Appellant(s) Mr. Ankit Swarup, Adv.
Mr. Jawad Tariq, Adv.
Mr. Ajay Kumar, AORFor Respondent(s) Mr. Santhosh Krishnan, Adv.
Mr. Yakesh Anand, Adv.
Mr. Sanjeev Anand, AOR
Ms. Sonam Anand, Adv.UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER(ANITA RANI AHUJA)
COURT MASTER

[Signed order is placed on the file]