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Reserved

Central Administrative Tribunal
Allahabad.

Registration Appeal No.792 of 1987

The Secretary of Communication
Posts and Telegraphs Department
Union of India, New Delhi and
7 others

... Appellants

Vs.

R.A.Dubey

... Respondent.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This is an appeal under Section 29-A of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act XIII of 1985) against the order dated 19.3.87 passed by the III Addl.District Judge, Gorakhpur in Civil Revision No.112 of 1987 which arises under the circumstances stated below.

2. The respondent R.A.Dubey had filed suit no.1398 of 1983 against the Union of India and others in the Court of Munsif Gorakhpur for a declaration regarding his promotion and other consequential reliefs. The said suit was decreed ex-parte on 27.5.1985 by the Munsif. It is alleged that the defendant-appellants had no knowledge of the institution of the said suit and the respondent had obtained ^{the} ex-parte decree fraudulently and they knew about it only when the Civil Court Amin went to attach the cash of the appellants on 16.7.1986 to realise a sum of Rs.74,657 as the decretal amount and soon thereafter on 17.7.1986, an application under O.IX R.13 of the Civil Procedure Code was moved by them before the Munsif for setting aside the ex- parte decree. The respondent had opposed the said application but the learned I Addl.Munsif Gorakhpur allowed the applica-

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later."

4. Originally there was no provision in Act XIII of 1985 for filing appeals against such judgments and decrees of the Civil Courts passed before the establishment of this Tribunal w.e.f. 1.11.1985 for which the prescribed time for filing the appeal had not expired by that date and for the first time by the Administrative Tribunals (Amendment) Act, 1986 this provision was made and such appeals were provided within 90 days from the date the Amendment Bill 1986 received the assent of the President or within 90 days from the date of the receipt of the copy of such decree or order. It is amply clear from the wordings of Section 29-A quoted above that such appeals could be preferred to the Central Administrative Tribunal only against such decrees or orders which were passed before the establishment of the Tribunal and not against any decree or order passed thereafter. In the instant case, the impugned order was passed by the III Addl. District Judge on 19.8.1987 and as such, it is not covered under Section 29-A and no appeal can lie against this order to the Tribunal.

5. It has been contended on behalf of the appellants that as the Act does not provide any remedy for setting aside ex-parte decrees obtained fraudulently before the establishment of the Tribunal and the appellants could not move an application for setting aside the ex-parte decree obtained by the respondent against them before they actually knew about it in May, 1986, they had no option but to move an application under O.IX R.13 CPC before the Munsif and the learned Addl. District Judge was

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tion vide his order dated 23.2.1987 accepting the contention of the appellants and set-aside the ex-parte decree. Against that order, the respondent filed Civil Revision No.112 of 1987 in the Court of the District Judge, Gorakhpur which was heard and allowed by the III Additional District Judge on 19.8.1987 and it was held that on the establishment of the Central Administrative Tribunal, the Munsif had no jurisdiction to entertain the application under O.IX R.13 CPC and the remedy of the defendant-appellants was to approach the Tribunal for redress. The present appeal was filed by the appellants on 28.8.1987 challenging the correctness of the order passed by the learned III Addl. District Judge. They have also moved an application under Section 5 of the Limitation Act, 1963 with the allegation that the appellants were prosecuting their remedy before the Civil Court under the bonafide belief and if there be any delay, the same be condoned. The appeal has been contested on behalf of the respondent and his contention is that this appeal is not maintainable under the provisions of Act XIII of 1985 and the application under Section 5 of the Limitation Act is not maintainable and in any case, cause shown for delay is not sufficient.

3. We have heard the learned counsel for the parties only on the maintainability of this appeal. We will like to reproduce below Section 29-A of Act XIII of 1985 under which this appeal has been filed :-

"29-A. Provision for filing of certain appeals.- Where any decree or order has been made or passed by any Court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie:-

not right in holding that the Munsif had no jurisdiction to entertain the said application. It being so, the remedy of the appellants may be in the High Court and not before this Tribunal. We refrain from expressing any opinion whether in the absence of any specific remedy under Act XIII of 1985 the defendant-appellants could legally move the Civil Court for setting aside the ex-parte decree under O.IX R.13 CPC or not. As conceded by the appellants, there is no remedy under the Act XIII of 1985 for setting aside the ex-parte decree passed by the Civil Courts before 1.11.1985, we cannot treat the present appeal as an application for setting aside the ex-parte decree made to the Tribunal. As the appeal filed by the appellants is not covered under the provisions of Section 29-A, it has to be dismissed as not maintainable.

6. The appeal is accordingly dismissed as not maintainable without any order as to costs.

Sharma
26.10.87
MEMBER(A)

Sharma
26/10/87
MEMBER(J)

Dated Oct. 26, 1987

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