

B.C. Narayan Vs. Vijayanagar Syndicate

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Court : Karnataka

Decided On : Dec-11-1992

Reported in : ILR1993KAR1120; 1993(2)KarLJ103

Judge : Vasanthakumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1

Appeal No. : C.Ps. Nos. 530 to 533 of 1992

Appellant : B.C. Narayan

Respondent : Vijayanagar Syndicate

Advocate for Def. : Mirle Krishnamurthy, Adv.

Advocate for Pet/Ap. : K.R. Srinivasa Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Vasanthakumar, J

1. On 18.6.1992 a Common Order was passed by this Court in Civil Revision Petitions Nos. 275/91, 277/91, 278/91 and 279/91. These Civil Revision Petitions arise out of Judgments and decrees passed in S.C.No.1518/86, 1415/86, 1416/86

and 1414/86.

2. The petitioners who are defendants in the Small Cause Suits have sought review of the Common Order dated 18.6.1992 passed by this Court and they are numbered as Civil Petitions 530/92, 531/92, 532/92 and 533/92. Since questions raised by the petitioners in all the Civil Petitions referred above are common, it is proposed to pass a Common Order. Points formulated for Review being:-

1. Scope of Section 69(1) and (2) of Indian Partnership Act which is mandatory has not been properly applied to the facts in these cases and declaration of law, by the Supreme Court on this point has not been adverted by this Court while passing the impugned orders.

2. Substantive law must give precedence to procedural law, and as such mandatory compliance of provisions of Section 69(1) and (2) of Partnership Act, must be given precedence to the procedural mandate as envisaged under Order 30 Rule 1 of C.P.C.

3. The Court erred in permitting the plaintiff to amend the plaints, with a view to regularise the factual omissions which are detrimental to the maintainability of the suits in question.

Regarding Points-1 and 2 raised by the petitioners, it is to be noted that in paragraphs-12, 13, 14 and 15 of the impugned Order which is sought for review, this Court has in detail discussed the scope of Section 69(2) of the Partnership Act, placing reliance on the ratio decidendi of the Supreme Court cases reported in H.H. Mahrani Mandalsa Devi and Ors. v. M. Ramnarain Private Ltd., : [1965]3SCR421 and Purushottam Umedbhai & Co. v. Manilal & Sons., : [1961]1SCR982 . Further, it is to be noted that this Court has referred to Gujarat Decision cited by the petitioners reported in Bharat Sarvodaya Mill v. Mohata Brothers, 1969 Gujarat 176. Regarding Point No. 3, this Court while permitting the plaintiffs to cause amendment of the plaint arrived at its reasonings placing reliance on the Supreme Court Decision reported in Owners & Persons interested in M.V. 'VALI PERO' v. Feranandez Lopez , : AIR 1989 SC2206 .

3. What is to be adverted in these Petitions is whether this Court overlooked binding Decision of the Supreme Court warranting reviewing of the order. It is well settled that a Decision which is erroneous in Law is no ground for review and that it is only where such Decision can be characterised as vitiated by an error apparent on the face of record it can be reviewed. So also a mistake simpliciter either in the realm of fact or of law is no ground for review. Further mere omission on the part of Court to consider a Decision however regrettable, however, wrong cannot possibly be regarded as constituting an error apparent on the face of record, Even assuming it to be an error that may be discovered from record itself it is to be seen that such an error cannot be construed as an error apparent on the face of record, since mistake of law cannot be said as mistake apparent on the face of record,

4. It may be apparent from the contrary Decision, of superior Court but that is not a part of record. In the state of divergence of views as to whether overlooking binding Decision amounts to an error apparent on the face of record the key to the solution of this question is that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could be no two opinions entertained about it clear case of error apparent on the face of record could be made out. Article 141 of the Constitution provides that law declared by the Supreme Court shall be binding on all Courts. The reasonings arrived at by this Court in passing Common Order the subject matter of review are based on ratio decidendi of the Supreme Court cases reported in 1965 SC. 1718, : [1961]1SCR982 and : AIR 1989 SC2206 . No doubt this Court is a Court of plenary jurisdiction and it has always jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

5. But the question before the Court is as to whether miscarriage of justice has really resulted or any grave and palpable error was committed so that the principles of the review so well Known under C.P.Code are to be harnessed for the purposes of granting relief to the petitioner. What is to be stated in the instant matter, there is neither discovery of new and important matter nor evidence which was not within the knowledge of either party nor some mistake, or error apparent on the face of the record nor any other sufficient reason so that it could be held

that there was grave and apparent error in the order of the Court. So in cases where the Court decides a legal question incorrectly that cannot be a ground for review since it is for the Higher Court to set right that finding.

6. In the Common Order the subject matter of review this Court has only directed the trial Court to re-consider and re-examine its findings recorded in the light of the Decisions of the Supreme Court, and as such no injustice has been caused to either of the parties on record, and it is open for either of the parties to espouse their causes before the trial Court. Hence circumstances do not warrant review of the order sought for by the petitioners. Accordingly, these Civil Petitions are dismissed.

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