

Prakash Chandra Vs. Ram Swarup

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Court : Allahabad

Decided On : Aug-04-1967

Reported in : AIR1969All400

Judge : Jagdish Sahai and ;Yashoda Nandan, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 122 - Order 39, Rule 2A - Order 43, Rule 1

Appeal No. : Misc. Appeal No. 300 of 1963

Appellant : Prakash Chandra

Respondent : Ram Swarup

Advocate for Def. : Krishna Gopal Srivastava and ;K.C. Saxena, Advs.

Advocate for Pet/Ap. : V.K. Gupta, Adv.

Judgement :

Jagdish Sahai, J.

1. The learned Additional Civil Judge, Aligarh, has made the instant reference to this Court under the provisions of section 113, C. P. C.

2. It would contribute to a clear understanding of the matter requiring consideration at our hands if we first reproduce the relevant provisions which are material for the

decision of this case.

3. This Court has amended Order XXXIX rule 2, C. P. C. by deleting Sub-rules (3) and (4) therefrom and by adding the following rule which has been numbered as 'rule 2A':

'2A (1). In the case of disobedience to an injunction issued under rule 1 or rule 2, Sub-rule (2), or of breach of any terms of any such injunction, the Court in which the suit is proceeding may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release,

(2) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.' Order XLIII Rule 1 was also amended as follows:--

'XLIII (1) (c). In Clause (r) add the words 'Rule 2-A' between the words 'Rule 2' and 'Rule 4'. The result of the amendment is that so far as this State is concerned Order XLIII rule 1 now reads:

' XLIII (1). An appeal shall lie from the following orders under the provisions of section 104, namely:

.. .. (r) an order under rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX.'

4. Misc. Appeal No. 82 of 1959 was filed in the court of the District Judge, Aligarh, who transferred it for hearing to the court of the Additional Civil Judge, Aligarh. This appeal was directed against the order passed by a Munsif in which he held that Prakash Chandra (the appellant before the District Judge) had disobeyed the injunction order passed by the Munsif.

5. When the appeal came up for hearing before the Additional Civil Judge, an objection was taken that it was not competent. The argument was that the right of appeal is a substantive right and inasmuch as the Code of Civil Procedure did not expressly confer a right in respect of a matter now covered by Sub-rule (2) (A) of Order XXXIX, C. P. C., the appeal was incompetent.

6. The amendments to the two rules mentioned above have been made by this Court under the provisions of S. 122, C. P. C. which reads:

'122. High Courts not being the Court of a Judicial Commissioner may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.'

Mr. Saxena, who has appeared for the appellant Prakash Chandra, has contended that under the provisions aforesaid only a rule of procedure could be annulled, altered or added to and inasmuch as a right of appeal is not a matter of procedure but is a substantive right, this Court had no power to amend Order XXXIX Rule 2 and Order XLIII Rule 1 (r) as it has done.

7. It is not necessary for us to enter into the question whether a right of appeal is a purely substantive right without having in it any element of procedure. What is required to be seen is whether under the provisions of section 122, C. P. C. the two rules mentioned above could or could not be amended in the manner they have been amended by this Court.

8. There cannot be any manner of doubt that the language of Section 122 is categorical and of wide amplitude. The provision clearly empowers a High Court to annul, alter or add to all or any of the rules contained in the First Schedule. The power is not confined to some rules only but extends to each and every rule falling in the First Schedule.

9. Mr. K.C. Saxena submits that the words 'make rules regulating their own procedure and the procedure of the Civil Courts' impose a restriction on the power of annulling, altering or adding to the rules. The contention is that the power is

confined to such rules only which are strictly rules of procedure. We are unable to agree with him. The power to annul, alter or add extends to each and every rule contained in the First Schedule and all that the words 'makes rules regulating their own procedure and the procedure of the Civil Courts' mean is that the amendment must be such that can operate only in the realm of the Civil Procedure Code and would not affect the provisions of other Acts.

10. The preamble to the Code of Civil Procedure reads:

'Whereas it is expedient to consolidate and amend the laws relating to the procedure of the courts of Civil Judicature; It is hereby enacted as follows:'

All the provisions in the C. P. C., therefore, whether they are in the main body of the Code or in the Schedule have been treated to be rules of procedure and it is in that sense that the expression 'make rules regulating their own procedure and the procedure of the Civil Courts' has been used. There have been occasions when under section 122 or its counterpart in earlier Codes of Civil Procedure rules had been framed which touched upon or affected or militated against provisions in other Acts such as Limitation Act. One such case is *Narsingh Sahai v. Sheo Prasad*, ILR 40 All 1: (AIR 1918 All 389 FB).

There a rule had been framed which read:

'No memorandum of appeal from an appellate order shall be presented, unless accompanied by a copy of the decree or order appealed against, and, where it exists, a copy of the judgment of the court of first instance, . . .'. The argument before the High Court in the above case was that this rule connoted that the appellant had a right to exclude from the period of limitation for filing his appeal the time requisite for obtaining a copy of the judgment of the court of first instance. The Full Bench held that:

'This Court has power to alter, amend and add to rules of procedure laid down by the Code of Civil Procedure, vide section 122, but nowhere has any power been given to it to touch the Limitation Act.'

11. It is to avoid encroachment upon the provisions of other Acts that the words 'make rules regulating their own procedure and the procedure of the Civil Courts' have been used in section 122, Code of Civil Procedure. We have already pointed out that the preamble of the Code of Civil Procedure clearly shows that the Legislature has treated the provisions contained in that Act as provisions relating to procedure in Civil Courts.

12. If the interpretation suggested by Mr. Saxena were to be accepted, the provision would have to be read as 'may by such rules annul, alter or add to all or any of the rules in the First Schedule relating only to procedure'. It is not possible to add any words to the existing provision which is clearly comprehensible and the literal and grammatical meaning of which are clear beyond doubt.

13. Mr. Saxena very strenuously contended that the words 'by such rules' clearly mean 'rules regulating the procedure of the High Courts and the procedure of the Civil Courts'. We agree with him that that indeed is the meaning of those words but we have already said that the Code of Civil Procedure takes every section and every rule contained in, the C. P. C. as a rule relating to procedure in a Civil Court.

14. The view that we are taking finds support from *Dr. Kishan Singh v. Bachan Singh*, AIR 1942 Lah 201. It was clearly pointed out in this decision that even though an appeal is a creature of statute and cannot exist without clear legislative provision the statute may delegate the power to create a right of appeal and, once that is done and a rule is framed with the delegated power, the rule permitting an appeal would be valid. We also find support for our view from *Raja Himanshu Dhar Singh y. Additional Registrar, Co-operative Societies, U. P. Lucknow* : AIR1962 All439 and *Attorney General v. Sillem*, (1863-64) 10 H. L. C. 704 as also *Perumalla Venkayya v. Betchu Pillayya*, AIR 1942 Mad 406.

15. The question which has been referred to us reads:

'Whether the inclusion of Rule 2-A in Order 43 rule 1 (r) between the words 'Rule 2' and 'Rule 4' is invalid and ultra vires of the Hon'ble High Court?'

16. In view of what we have said above, our answer to the question referred to us is in the negative and we hold that the rules mentioned in the question are intra vires of the powers of this Court. In the circumstances of the case, we direct that the parties shall bear their own costs.

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