

Gyan Chandra Dwivedi Vs. 2nd Additional District Judge, Kanpur and ors.

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Court : Allahabad

Decided On : Feb-19-1986

Reported in : AIR1987All40

Judge : A.N. Varma, J.

Acts : [Constitution of India](#) - Articles 141 and 226; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 37 - Order 47, Rule 1

Appeal No. : Review Petn. No. Nil of 1984 in Civil Misc. Writ Petn. No. 2987 of 1978

Appellant : Gyan Chandra Dwivedi

Respondent : 2nd Additional District Judge, Kanpur and ors.

Advocate for Def. : Ratnakar Choudhary, Adv.

Advocate for Pet/Ap. : Sudhir Chandra, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A.N. Varma, J.

1. This is a landlord's petition seeking review of the judgment delivered on 21-1-1980 allowing a writ petition filed by the tenant of the premises in question and directing the Prescribed Authority to dispose of the landlord's application for release under Section 21 of U.P. Urban Buildings (Regulation of Letting Rent & Eviction) Act (U.P. Act No. XIII of 1972) in accordance with the observations made in the judgment.

2. The facts relevant for the disposal of the review petition are these. The review petitioner is the landlord of House No. 104/102, Old Sisamau, Kanpur while the opposite party No. 3 is a tenant of the first and second floor portion of the house. The landlord filed an application for release of the accommodation on the ground that he needed the tenanted portion for his own personal occupation. He also relied on Explanation -- IV to Section 21 of the said Act which provided that if the landlord applies for the release of a tenanted portion of a building the remaining part of which is in his own occupation, the need of the landlord would be presumed to be bona fide under Section 21 of the said Act. While the landlord's application was pending before the Court below Explanation IV was deleted by U.P. Act No. 28 of 1976. A question, therefore, arose in a large number of cases as to whether the landlord could rely on Explanation IV in support of his claim that he bona fide required the building under tenancy for his own personal occupation even after its deletion. For the tenants it was contended that Explanation IV merely embodied a rule of evidence and hence must be deemed to be procedural in nature. That being so, the amendment would be deemed to be retrospective and hence be applicable to pending proceedings also. The question was finally settled by a Full Bench decision of this Court in the case of Ram Kumar v. District Judge, Bareilly, reported in 1978 (U.R) RCC 377 : (1978 All LJ 784). The Full Bench ruled that the deletion of Explanation IV will have to be taken note of in deciding pending applications also i.e., the amendment brought about by U.P. Act 28 of 1976 deleting Explanation IV shall have retrospective effect.

3. Following the Full Bench decision in Ram Kumar's case, the writ petition filed by tenant was allowed and orders passed by the Prescribed Authority as well as the IInd Addl. District Judge, Kanpur, allowing the application of the landlord under Section 21 with the aid of Explanation IV were quashed. The Prescribed Authority

was directed to dispose of the Landlord's application for release without applying Explanation IV. The result was that the need of the land had to be determined on its merits unaided by the presumption of the genuineness thereof which was previously available under Explanation IV.

4. After the case was sent back to the Prescribed Authority in January 1980, the landlord did not take any step whatever for the revival of the proceedings for nearly four and a half years. It was only on the 23rd Aug. 1984 that this review application was filed and the sole ground for review disclosed therein was that in a subsequent decision rendered by Supreme Court which was reported in : [1984]3SCR315 Smt. Bimla Devi v. First Addl. District Judge, their Lordships of the Supreme Court have taken the view that there was nothing to indicate that the deletion of Explanation IV was retrospective.

5. The application has been contested by the tenant on a variety of grounds. In the first place, it was contended that the mere fact that the view expressed by the Full Bench on which the judgment of this Court was founded has been reversed by the subsequent decision of the Supreme Court could not afford a valid ground for review of the judgment rendered by this Court allowing the tenant's petition. Secondly, it was contended that in any case the landlord having failed to take any steps before the Prescribed Authority in pursuance of the judgment and order of this Court during all these last several years, the review petition deserves to be dismissed on the ground of delay.

6. Sri Sudhir Chandra for the landlord vehemently contended that this Court should give effect to the law declared by the Supreme Court in Smt. Bimla Devi's case : [1984]3SCR315 (supra), more so when the proceedings are still pending before the Prescribed Authority. He submitted that the judgment of which review is being sought clearly proceeds on a legal premise which is in direct conflict with the opinion of the Supreme Court in Smt. Bimla Devi's case and hence it deserves to be reviewed.

7. Sri Ratnakar Chaudhary for the tenant on the other hand, contended that the mere fact that the view taken by the Full Bench on which the judgment in question was founded has been reversed by a subsequent decision of the Supreme Court

could not be a valid ground for review of the judgment. In any case, in view of the explanation to Order XLVII, Rule 1, the judgment in question cannot be reviewed merely on the ground that the decision on which the judgment of this Court is based has been reversed by a subsequent decision of the Supreme Court. He also argued that in any case the review petition should be dismissed on the ground of gross and unexplained delay. It was alleged that after case was remanded by this Court in January 1980, the landlord sat silent and took no steps to review the proceedings before the Court below. To recognize his right to do so now on the basis of the judgment of the Supreme Court which was rendered years later would be introducing an element of gamble in litigation. For all these reasons, the review petition should be dismissed.

8. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, reported in : 1979 CriLJ908 , their Lordships of the Supreme Court had occasion to consider the scope and nature of High Court's power of review of its own order in a writ petition. After advertng to an earlier decision of the Supreme Court in the case of *Shivdeo Singh v. State of Punjab* AIR 1963 SC 1909 their Lordships observed thus:

'It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court.'

9. It will thus be seen that while power of review may be inherent in the High Court to review its own order passed in a writ petition, the same has to be exercised on well recognised and established grounds on which judicial orders are reviewed. For example the power may be exercised on the discovery of some new and important matter or evidence which was not within the knowledge of the parties seeking review despite due exercise of diligence when the order was made. Review can also be sought when the order discloses some error apparent on the face of record or on grounds analogous thereto. These are all grounds which find mention in various judicial pronouncements right from the earliest time as well as in the Rules of Order XLVII of the Civil P.C. as permissible grounds of review.

An Explanation was added to Order XLVII Rule 1 by the amendment of the Civil P.C. by Central Act No. 104 of 1976. It reads :

'The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.'

10. This explanation was added on the recommendation of the law Commission to put an end to the controversy which had arisen as regards whether a judgment could be reviewed merely on the ground that the decision on a question of law on which the same was founded has been reversed or modified by the subsequent decision of a superior Court. Almost all the High Courts, save for the solitary exception of Kerala High Court, were unanimous in their opinion that the fact that the view of law taken in a judgment has been altered by a subsequent decision of a Superior Court in another case could not afford a valid ground for the review of the judgment. (See *Liaqat Husain v. Mohammad Razi*, AIR 1944 Oudh 198; *Lachmi v. Ghisa* ; *Patel Naranbhai v. Patel Gopaldas* : AIR1972 Guj229 ; *Venkataswami Raddigar v. Thirukamu Reddiar* : (1977)1MLJ524 .

11. If, therefore, Order XLVII, Rule 1 is applied to the present case, it is apparent that the review petition would be liable to be dismissed upon the plain terms of Explanation to Order XLVII, Rule 1. Learned counsel for the Landlord, however, placed strong reliance on Explanation to Section 141 of the Civil P.C. Section 141 enacts that the procedure provided in the Code in regard to suits shall be followed,

as far as may be in all proceedings in any Court of civil jurisdiction. Explanation to Section 141 was, however, added by the Central Act 104 of 1976 and it provides :
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'In this section. the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.'

It was urged that in view of this Explanation, Order XLVII would not apply to writ petitions.

12. I am unable to agree, Even if it is assumed that Order XLVII, Rule 1 may not in terms apply to review of judgment and orders passed in writ petitions under Article 226 of the Constitution, I see no reason why the principle underlying the same should not be invoked while considering an application for review of a judgment of a High Court rendered under Article 226 of the Constitution. Clause (C) to Order XLVII, Rule 1 merely embodies all those principles which the Courts of law have repeatedly recognised as grounds on which a judgment may be legitimately reviewed. Incidentally, these are also the grounds which find mention in the above quoted decision of the Supreme Court in the case of Aribam Taleswar Sharma. : 1979 CriLJ908 (supra) as the grounds on which High Courts may review their judgments and orders passed under Article 226. Explanation to Order XLVII, Rule 1 merely explains and outlines the scope and ambit of the expression, in my view, 'error apparent on the face of the record.'

13. That being so, I see no ground whatever for not applying the principle underlying the Explanation to Order XLVII, Rule 1 to writ petitions also. The Explanation, in my view, enshrines a very salutary principle which is of general application, namely, that finality attaching to judgments ought not to be disturbed except by way of of appeal or on recognized grounds of review set out hereinabove and approved by their Lordships of the Supreme Court in the decision cited above.

14. Learned counsel for the landlord also submitted that the pronouncement of the Supreme Court in Smt. Bimla Devi's case : [1984]3SCR315 is binding on this count under Article 141 and hence should be given effect to even by way of a

review of this Court's judgment. No one can possibly dispute that the pronouncements of the Supreme Court have a binding effect under Article 141 of the Constitution. However, the law laid down by the Supreme Court can be given effect to only if the matter were at large before this Court in proceedings which may be legitimately pending before it. But as it happens this Court finally parted with the case with the pronouncement of its judgment rendered in 1980. That being so, and in view of the above pronouncement of the Supreme Court which is equally binding on me as regards the Scope of High Courts' power of review, this Court will not be justified in reviewing its judgment on the ground canvassed by the learned counsel for the landlord.

15. Finally, I also find considerable substance in the objection raised by the learned counsel for the tenant that this Court ought not to exercise its discretion in favour of the landlord in view of the fact that admittedly he took no steps towards the furtherance of the proceedings before the Court below for nearly four and a half years after the judgment of this Court.

16. In the result, the review petition is dismissed without any order to costs.

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