

Dr. Chandra Mohan Singhal and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Dec-05-2002

Reported in : 2003(1)AWC251

Judge : B.K. Rathi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 11

Appeal No. : Civil Revision Nos. 51 and 52 of 2002

Appellant : Dr. Chandra Mohan Singhal and ors.

Respondent : State of U.P.

Advocate for Def. : P.P. Srivastava, ;V.K.S. Chaudhary and ;Vishnu Pratap, Advs. and ;S.C.

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

Judgement :

B.K. Rathi, J.

1. The above civil revisions were allowed by the judgment and order dated 25.7.2002 by which plaint of Original Suit No. 44 of 1993 and of Original Suit No. 45 of 1993 were quashed.

2. The plaintiff-opposite party has moved an application for recall of the judgment and order dated 25.7.2002 on the ground that its counsel Sri P. P. Srivastava, senior advocate, appointed by the State Government as special counsel has unilaterally withdrawn from the case without informing the concerned authorities, and as such the State be also heard.

3. I have heard Sri Vishnu Pratap, standing counsel in support of the application as well as Sri V. K. S. Chaudhary, senior advocate assisted by Sri A. K. Gupta, learned counsel for the revisionists.

4. A perusal of the order sheet of the revision would reveal that initially Sri P. P. Srivastava, senior counsel was appearing in the case.

5. The case was listed on 13.5.1998 on which date the counsel for parties agreed that the case be heard on 19.5.1998. The matter was, however, not taken up on 19.5.1998 and thereafter, it was taken up on 29.5.1998. On 29.5.1998 Sri P. P. Srivastava, counsel for the State Government gave an undertaking that no steps will be taken in the pending proceedings before the Court below. The case was thereafter listed on 11.12.2001 and when the matter was taken up, Sri P. P. Srivastava disappeared and the learned standing counsel appeared for the State and after hearing him, the delay in filing the revision was condoned in view of the order of the Division Bench dated 23.4.1997, passed in Writ Petition Nos. 38645 of 1993 and 38647 of 1993.

6. The case was then taken up on 13.12.2001, when the standing counsel for the State Government took time for further instructions. Thereafter, on 13.12.2001, itself Sri P. P. Srivastava, senior advocate, appeared for the State on which date the following order was passed by the Court :

'Later on Sri P. P. Srivastava has appeared as counsel for the State and requested for extension of the date. Therefore, put on 4.1.2002 for further orders.'

On 4.1.2002, the following order was passed by the Court :

'Put up on 10.1.2002 peremptorily, on the request of Sri P. P. Srivastava, senior advocate.'

On 10.1.2002 the following order was passed by the Court :

'Heard Sri A. K. Gupta, learned counsel for the revisionists. Sri Anil Srivastava has filed his vakalatnama and requested for time.'

'The case has been fixed peremptorily and has been adjourned several times. Put up on 17.1.2002 for hearing peremptorily.'

On 17.1.2002, the following orders were passed by the Court :

'Sri P. P. Srivastava, learned senior advocate for the State requested for time which had been vehemently opposed by the revisionists. It is contended that the State of U. P., is using this practice to delay the case.'

Sri P. P. Srivastava has alleged that due to filing of the nominations for the ensuing U. P. Assembly Elections nobody could come to give instructions. With the consent of Sri P. P. Srivastava, it is directed that the case be listed on 4th February, 2002, peremptorily for further hearing. No further adjournment shall be allowed.'

On 4.2.2002, the Court passed the following order :

'Heard Sri V. K. S. Chaudhary. learned senior advocate, for applicants and Sri P. P. Srivastava, learned senior advocate, assisted by Sri Anil Srivastava, learned counsel for the opposite party. The revision has not been given regular number. The delay has been condoned therefore it may be given a regular number.'

Heard arguments. The arguments on the revision has yet not been concluded. Put up for further hearing of arguments on 25th February, 2002. Also call for the record of Writ Petition Nos. 38647 of 1993 and 38645 of 1993, Contempt Petition Nos. 51 of 1981 and 645 of 1992 and Criminal Writ Petition No. 2989 of 1996.'

On 27.2.2002. the following order was passed by the Court :

'Heard Sri V. K. S. Chaudhary, senior advocate assisted by Sri A. K. Gupta, learned counsel for the revisionist and Sri P. P. Srivastava, senior advocate for the opposite party.'

Put up on 4th March, 2002, for further arguments.'

The case was thereafter listed on 4.4.2002, on which date 8.4.2002 was fixed for further arguments. On 8.4.2002, the following order was passed by the Court :

'Sri A. K. Gupta, is present for the revisionist. Heard arguments. His arguments stand concluded. Argument on behalf of State shall be heard on 15.4.2002.'

On 15.4.2002, the following order was passed by the Court :

'Heard Sri A. K. Gupta, counsel for the petitioner. None present for the State of U. P. though notice in writing had been given by the counsel for the revisionist. The arguments by the counsel for the petitioner had already concluded. Judgment reserved.'

The counsel for the State Sri P. P. Srivastava thereafter appeared and on his request the following order was passed by the Court :

'Put up on 24.4.2002, on the request of Sri P. P. Srivastava.'

7. On 24.4.2002, the arguments on behalf of State could not be concluded and 6th May was fixed for further arguments. On 6th May, 2002, on the request of the counsel for the State the case was ordered to be put up on 13.5.2002 for arguments. On 13.5.2002 the following order was passed by the Court :

'On the request of Sri P. P. Srivastava put up on 20.5.2002 for arguments.'

On 20.5.2002, the following order was passed by the Court :

'Put up for further arguments on 8.7.2002 at 2.00 p.m. on the request of Sri P. P. Srivastava, senior advocate.'

8. On 8.7.2002, Sri P. P. Srivastava and Sri Anil Srivastava, advocates stated that they have no instructions and they may be permitted to withdraw from the case. Nobody thereafter appeared for the State and the judgment was reserved and thereafter pronounced on the arguments already advanced by the parties.

9. In view of the facts stated above, there was least justification for the State to have delayed the hearing of the matter. After taking several adjournments, by the special counsel, they withdrew from the case. If the special counsel of the State withdrew from the case, the State should have instructed some other counsel. No reasons have been mentioned in the application as to why Sri P. P. Srivastava, advocate withdrew from the case. It be also mentioned that the impugned order was passed on the application under Order VII, Rule 11, C.P.C. for rejecting the plaint as early as on 27.9.1993, against which the defendant revisionist filed Writ Petition Nos. 38645 of 1993 and 38647 of 1993. The writ petitions were entertained by this Court and the affidavits were exchanged and it was fixed on 23.4.1997 for hearing. On the said date an objection was raised by the State that the impugned order is revisable and as such a revision should have been filed and the writ is not maintainable, on which a Division Bench of this Court passed the following order :

'Heard Sri A. K. Gupta, learned counsel for the petitioners. The order under challenge in this petition is indeed revisable under Section 115, C.P.C.

This writ petition suffers from the principle of 'exhaustion of alternative remedy.'

This being so, the petitioners if so advised may prefer revision against the order impugned.

However, it is made clear that if the petitioners prefer a revision within a period of one month from today the same shall be considered and decide on merits expeditiously.

With the above observations, this petition is finally disposed of. Interim order, if any, is hereby vacated.

Sd. B. M. Lal, J.

Sd. Bhagwan Din, J.

23.4.1997'

10. The facts clearly show that more than necessary indulgence was shown for the State and repeated adjournments were given to advance the arguments. Sri P. P. Srivastava, senior advocate was accommodated at every time whenever the request was made by him for adjournment. However, he has withdrawn from the case without any reason. The respondents have not alleged in the recall application as to why Sri P. P. Srivastava withdrew from the case and why no information was given by him to the opposite parties and they did not engage another counsel. In the circumstances, there is absolutely no ground for recalling the order dated 25.7.2002. It may also be mentioned that judgment was reserved on 8.7.2002 and was pronounced on 25.7.2002. In the meantime, no application was moved by the State for its arguments.

11. Regarding the merits Sri Vishnu Pratap, learned standing counsel could not show any relevant facts, documents or affidavit, which might not have been considered in the impugned order dated 25.7.2002. The order is very exhaustive, every facts have been considered. Therefore, there is also no ground to recall the order.

12. The main argument of the learned standing counsel before me is that the revisions were not maintainable under Section 115, C.P.C.

13. It has further been argued that in any case there is no error of jurisdiction in the order of the court below and, therefore, the order cannot be reversed under Section 115, C.P.C.

14. Learned standing counsel in support of the arguments has also referred to the few cases.

15. The first is Damodar Ropeways and Construction Co. Put. Ltd. v. Krishna Engineering Works, 2001 (6) Supreme 424. In this case, the trial court allowed the appellant-defendant to defend the money recovery suit by condoning delay in filing the leave to defend in limine. The High Court in revision set aside the order. The Apex Court set aside the order of the High Court for the reason that there was no error of jurisdiction in the order of the trial court.

16. The other case referred to is State of U. P. and Anr. v. Bank of Maharashtra Ltd., Bombay, 1982 All LJ 7824. In this case, it was held by the single Judge of this Court that in the absence of jurisdictional error the order cannot be revised even if the same is wrong.

17. The other case referred to is Suitej Construction Company Pvt. Ltd. v. State of Punjab and Ors., 2001 (6) Supreme 74. In this case the arbitration award was made rule of Court. The appeal was also dismissed. However, the High Court set aside the award on the ground that the arbitrator committed gross misconduct in awarding the damages on misconstruction of clauses of contract. The Apex Court held that the High Court has exceeded its revisional jurisdiction.

18. The other case referred to is Kaluram Jain v. Mahabir Prasad, 1978 AWC 447. It was held that even if the order is erroneous, the High Court has no jurisdiction to interfere in the order under Section 115, C.P.C.

19. I have carefully considered the above cases. There is no decision directly applicable to the facts of the case. In the case, the Division Bench had directed for decision of revision on merits by order dated 23.4.1997. The said order has become final and has not been challenged before any Court. Therefore, the revisions were heard on merits.

20. The question whether the suit could proceed, or the plaint should be rejected go to very root of the matter. The exercise of powers in wrongly rejecting the plaint under Order VII, Rule 11, C.P.C. or refusing to reject the plaint under the said provisions is jurisdictional matter. The court below, therefore, committed an error of jurisdiction in not rejecting the plaint under Order VII, Rule 11, C.P.C. and the said order could be interfered with in the revision.

21. I, therefore, find that neither there is sufficient ground for recalling the order dated 25.7.2002, nor there is any illegality in the order which might have resulted in injustice. Accordingly, both applications for recalling the order dated 25.7.2002 are rejected.