

Pirbux Vs. Babulal

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Court : Madhya Pradesh

Decided On : Dec-12-1985

Reported in : AIR1987MP18; 1986MPLJ720

Judge : C.P. Sen and ;M.D. Bhatt, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; Madhya Pradesh Code of Civil Procedure (CPC) (Amendment) Act, 1984

Appeal No. : Civil Revn. No. 6 of 1985

Appellant : Pirbux

Respondent : Babulal

Advocate for Def. : R.P. Tiwari, Adv.

Advocate for Pet/Ap. : M.L. Jaiswal, Adv.

Disposition : Revision dismissed

Judgement :

C. P. Sen, J.

1. The learned single Judge has referred the following two questions for decision by a larger Bench with a request to hear and decide the revision itself : --

(1) Whether the applicant-plaintiff has acquired any vested right to file a revision in this Court under Section 115, C.P.C. on the date of filing the present suit ?

(2) If the answer to question No. 1 is in the affirmative, whether the present revision in this Court is unaffected by the amendment of Section 115, C.P.C. by amending Act. No. 29 of 1984?

This Order will also dispose of Civil Revisions Nos. 1460/84, Bhailal v. Ramakant @ Soukhilal, 103/85, Shankerlal v. Illahi; 204/85, Ramniwas Gupta and Ors. v. Jamnadas and another; 277/85, Sanjeev Jain v. Balkrishna Agarwal and Ors., 289/85, Bharatlal Seth v. Municipal Council, Maharajpur; 354/85, Ramchani and Ors. v. Ram Prasad Tiwari and 458/85, Smt. Ramsakhbai and Anr. v. Santosh Kumar in which cases also the aforesaid questions have been referred to the larger Bench. This order will also dispose of Civil Revision No. 864/84, Ramnarayan and Anr. v. Mahila Mohani Bai of the Gwalior Bench in which reference has been made because in an earlier order passed in that revision it was held that Division Bench decision of the Gwalior Bench in Gayaprasad v. Deepchand decided on 14-11-84: (reported in 1985 Cur Civ LJ (MP) 91) is not applicable in present case. Therefore, when the matter came up before another learned single Judge he thought it necessary to refer this case to decide whether that decision will be applicable.

2. In all these cases revisions have been preferred in the High Court against the appellate order of the District Judge/Addl. District Judge affirming or vacating the interim injunction granted by the trial Court. In all these cases suits were filed in the Court of Civil Judges and temporary injunctions were sought. Against grant or refusal of temporary injunctions, appeals were preferred before District Judge/Addl. District Judge. Section 115 of the Civil P.C. has been substituted by Section 4 of Civil P.C. (M. P. Amendment) Act, 1984, (No. 29 of 1984) which came into force from 14-8-1984 which is quoted hereunder : --

'4. Substitution of Section 115- For Section 115 of the principal Act, the following section shall be substituted, namely : --

115. Revision.-- The High Court in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, and the District Judge in any other case may call for the record of any case which has been decided by any Court subordinate to such High Court or District Judge, as the case may be, and in which no appeal lies thereto, and if such subordinate Court appears--

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;

the High Court or the District Judge, as the case may be, make such order in the case as it thinks fit;

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Judge, the High Court alone shall be competent to make an order under this section;

Provided further that the High Court or the District Judge shall not, under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceedings, except where, --

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceedings; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Explanation.-- In this section, the expression 'any case which has been decided' includes any order deciding an issue in the course of a suit or other proceeding.'

It may be mentioned that the provision is similar to the amended Section 115 of the Civil P.C., the only difference being that instead of revisions lying to the High Court, now revisions will lie to the High Court only in respect of suits or other proceedings

of the value of rupees twenty thousand and above, while revisions will lie to the District Judge in respect of suits and other proceedings below the value of rupees twenty thousand. But in case the suits and other proceedings below the value of rupees twenty thousand is being tried by the District Judge, the High Court alone will have power of revision in such suits. So by this amendment, merely there is change of forum.

3. Interpreting an identical provision in Section 3 of Civil P.C. (U.P. Amendment) Act, 1978 substituting Section 115 by identical provision the Supreme Court in *Sri Vishnu Awatar v. Shiv Autar*, AIR 1980 SC 1575 held as under: --

'Decision of District Courts rendered in', appeal or revision are beyond revision by the High Court, if the suit is of less than Rs. 20,000/-. But an exception had been engrafted by the first proviso to Section 3 to the effect that where an original decision has been made by a District Court, the High Court's appellate or revisional power will come into play. That is as it should be, for one appeal or revision is almost universal. But otherwise, the District Court's decision is immune to revisional probe by the High Court. The short test to refuse revisory jurisdiction to the High Court is to ascertain whether the decision sought to be challenged is in a case, arising out of a suit of the valuation of Rs. 20,000/- and more. If the answer is 'yes' then the High Court has revisory power, but if the suit from which the case arises and in which the decision is made is one where the valuation is less than Rs. 20,000/- then the litigation cannot travel beyond the District Court except in that class of cases where the decision is taken for the first time by the District Court itself in a case arising out of an original proceeding.'

In an earlier decision the Supreme Court in *Vishesh Kumar v. Shanti Prasad*, AIR 1980 SC 892 held that the revisional order of the District Court under Section 115 is not subject to further revision by the High Court. These cases are sought to be distinguished on the ground that U. P. amendment specifically provided that the amended section will apply to pending suits but there is no such provision in the substituted section by the M. P. amendment. The question, therefore, remains whether the right of revision is a vested right just like an appeal and cannot be taken away retrospectively unless it is specifically provided in the statute.

4. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective. In contrast to statutes dealing with substantive rights, statutes dealing with merely matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible. The Supreme Court in *Garikapati v. Subiah Choudhary*, AIR 1957 SC 540 has held as follows : --

'The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. The right of appeal is not a mere matter of procedure but is a substantive right. The institution, of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant, and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.'

5. The word used in Section 115 is 'may' while in the provisions of appeals provided in Sections 96, 100, Order 43, Rule 1 the word used is 'shall'. Therefore, it is evident that the power of revision is discretionary. The Supreme Court in *S. S. Khanna v. F. J. Dillon*, AIR 1964 SC 497 has held :-

'That is not to say that the High Court is obliged to exercise its jurisdiction when a case is decided by a subordinate Court and the conditions in Clauses (a), (b) or (c) are satisfied. Exercise of the jurisdiction is discretionary; the High Court is not bound to interfere merely because the conditions are satisfied. The interlocutory

character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding or by a suit, and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist, should exercise its jurisdiction.'

As has been pointed out earlier, under the substituted Section 115 by M. P. amendment, there is only change of forum. From the original forum being High Court, now two forums are provided, one to the High Court in respect of suits and other proceedings of the value of rupees twenty thousand and above and the other forum being the District Judge in respect of suits and other proceedings of the value less than rupees twenty thousand, provided in respect of suits and other proceedings of the value less than rupees twenty thousand tried by the District Judge, revision will lie to the High Court only. The Supreme Court in *N. I. Insurance Co. v. Shanti Misra*, AIR 1976 SC 237 has held that on the plain language of Sections 110-A and 110-F the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. Such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. The jurisdiction of the Civil Court is ousted as soon as the Claims Tribunal is constituted and the filing of the application before the Tribunal is the only remedy available to the claimant. In view of this decision, the change brought about in Section 115 by M. P. Amending Act is only change in the procedural law and it will apply retrospectively even to pending suits and other proceedings. Therefore, against the appellate or revisional order of the District Judge, no revision lies to the High Court under the new provision irrespective of the fact whether the suit has been filed before or after the amending Act came into force. However, the learned counsel for the applicant relied on a decision of the Supreme Court in *Shankar v. Krishnaji*, AIR 1970 SC 1 wherein it has been held that the right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the

latter; When the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the Code circumscribes the limits of that jurisdiction but the jurisdiction which it being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. In that case it has not been held that revision is a vested right as it is in appeal and the question for decision before the Supreme Court was whether the High Court (can) interfere under Articles 226 and 227 of the Constitution with order of the appellate Court in proceedings under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, when a petition for revision under Section 115, C.P.C. against the same order has been dismissed by a single Judge of that Court. While considering this question, a question arose as to whether the order of the appellate Court under the said Act merged in the order of the High Court passed in its revisional jurisdiction under Section 115 of the Code in revision against the order. It is in this context that the Supreme Court held that though the order passed in revisional jurisdiction is an order of the superior Court passed on examination of the impugned order of the Tribunal and, as such, that order merges in the order of the High Court and so no writ petition is maintainable against the order as the matter has already been decided by the High Court in revision.

6. We are fortified by the opinion of the Gwalior Bench of this Court in *Gayaprasad v. Deepchand* (Civil Revn. No. 942/84 decided on 14-11-84) wherein it has been held that in case of an order passed either before 14-8-1984 or after 14-8-1984 in an original suit or other proceedings of the value of less than Rs. 20,000/- instituted before 14-8-1984, by any of the Courts of subordinate Judges, i.e., other than the Court of the District Judge, a revision petition under Section 115, as amended, of the Civil P.C., after 14-8-1984 shall lie to the District Judge, and not to the High Court. Unfortunately, this decision was not brought to the notice of the learned single Judge before making reference. Following this Division Bench decision, a single Judge of the Gwalior Bench in *Jagman Singh v. Hemsingh*, 1985 Jab LJ 319 : (AIR 1986 Madh Pra 112) held that where in a suit or other

proceedings before a Civil Judge of the value of less than Rs. 20,000/- after 14-8-1984 revision shall lie to the District Judge and not to the High Court and other proceedings will not include an appeal. It may also be mentioned that as has been held by the Supreme Court in *Vishesh Kumar v. Shantiprasad and Sri Vishnu Awater v. Shiv Avtar* (supra) no provision lies to the High Court against an appellate or revisional order of the District Judge in view of the amendment in Section 115 of the Code.

7. Accordingly, the questions referred are answered by saying that there is no vested right to file revision and in view of the amendment in Section 115 by M. P. Amending Act no revision lies to the High Court against an appellate or revisional order of the District Judge in suits or other proceedings of the value of less than Rs. 20,000/- irrespective of the fact whether the suit was pending, or the suit was filed subsequently after the amending Act came into force or whether the impugned order was passed prior to or after the amending Act came into force. Consequently, this revision is dismissed as not maintainable. Parties to bear their own costs.

BHATT, J.

8. I fully agree with the opinion expressed by Sen, J. However, I would like to add that no person has any vested interest in procedure. Matters of procedure apply to a pending suit if the law is changed during the pendency of suit (*Janakinath v. Nirodbaran Ray*, AIR 1930 Cal 422. An appeal is a continuation of the proceedings, in effect the entire proceedings are before the appellate authority which has power to review the evidence subject to the statutory limitations prescribed. But in a revision, the revisional authority has not the powers to review the evidence unless expressly conferred by a statute. It cannot travel beyond the order passed or proceedings recorded by the inferior authority and make fresh enquiry and pass orders on merits on the basis of the said enquiry (*State of Kerala v. K.M.C. Abdulla and Co.*, AIR 1965 SC 1585). While exercising its discretion High Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief. One of such relevant circumstances would be whether the order sought to be revised has

occasioned a failure of justice. (Brij v. Kishan, AIR 1973 SC 1096). Section 115, it is plain, vests the High Court with a discretionary power to be exercised judicially to interfere only when the cause of justice demands it. The High Court is not bound to interfere merely because the conditions of Section 115 are satisfied (Rani v. Gopichand, AIR 1973 SC 566). Interference in revision is purely discretionary and even if the lower Court has acted without jurisdiction or acted illegally in the exercise of jurisdiction, the High Court will not interfere unless grave injustice or hardship would result from failure to do so.

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