

**Devendra Kumar Vs. Jaidayal**

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**Court :** Madhya Pradesh

**Decided On :** Feb-19-1980

**Reported in :** AIR1981MP160; 1981MPLJ280

**Judge :** G.L. Oza and ;S.R. Vyas, JJ.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 11 and 11(2); Code of Civil Procedure (CPC) (Amendment) Act, 1976 - Sections 97(1), 121 and 122

**Appeal No. :** Civil Revn. No. 13 of 1978

**Appellant :** Devendra Kumar

**Respondent :** Jaidayal

**Advocate for Def. :** R.G. Waghmare, Adv.

**Advocate for Pet/Ap. :** S.D. Sanghi, Adv.

**Judgement :**

**G.L. Oza, J.**

1. The question referred to us in this revision petition is :--

'whether in view of the provisions of Section 97 of the Civil Procedure Code (Amendment) Act, 1976 the amendment, made by this Court in Sub-rule (2) of Rule 11 of Order 20, Civil Procedure Code, 1906 stands repealed?'

It appears that in execution of a money decree for mesne profits the petitioner-judgment-debtor submitted an application on 7-12-1977 to the executing Court under Sub-rule (2) of Rule 11 of Order 20 of the Civil Procedure Code for facility of instalments for payment of the decretal amount. The non-applicant-decree-holder not only objected to the prayer made in the aforesaid application on merits, but also urged that Sub-rule (2) of Rule 11 of Order 20 as amended by the Madhya Pradesh High Court was no longer in force because of the provisions of the Civil Procedure Code (Amendment) Act, 1976 and it was contended that in view of Sub-rule (2) of Rule 11 of Order 20 as it stands in the Civil Procedure Code after amendment the facility of instalments could only be given with the consent of the decree-holder and not as contemplated by the Madhya Pradesh High Court amendment by issuing notice to the decree-holder. The executing Court upheld the objection raised by the decree-holder and the application of the judgment-debtor-petitioner was dismissed and it is against this order of the executing Court that the revision petition was filed before a learned single Judge of this Court. The learned single Judge after hearing the revision petition felt that an important question arose as to whether the Amendment Act of 1976 amending the Civil Procedure Code repealed Sub-rule (2) of Rule 11 of Order 20 as modified by the Madhya Pradesh High Court. Consequently the question was framed and it has been placed before us for answer.

2-3. Sub-rule (2) of Rule 11 of Order 20, Civil Procedure Code remains the same even after the amendment. It reads :

'After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.' It was even before the Amendment Act of 1976 in the same terms. But the Madhya Pradesh High Court exercising powers under Section 122 of the Civil procedure Code amended this rule and substituted the words 'with the consent of the decree-holder' occurring in this rule by 'after notice to the decree-holder'. This Sub-rule (2) of Rule 11 of Order 20 as amended by the Madhya Pradesh High Court before the

Amendment Act of 1976 reads :-- 'After the passing of any such decree the Court may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.' After this the 1976 Amendment Act was brought in force.

4. Learned counsel appearing for the petitioner contended that by Section 97(1) of the Amendment Act only that much of the provision which was inserted by the High Court would be repealed which is inconsistent with the provisions of the 'principal Act' as amended by this Act and it was contended that this 'principal Act, occurring in the last sentence of Section 97(1) refer to the Act i.e. sections and not to the Schedule part of it as according to the learned counsel even after the amendment Section 122 has been retained and the High Court has been conferred with the powers to frame rules. Restrictions of these powers have been provided for in Section 128 and the only restriction is that such rule shall not be inconsistent with the provisions of the 'body' of this Code and it was contended that the phrase 'body of this Code' is referable to the sections part only as the Schedule shall not be covered. It was further contended that the word 'Code' is defined in Section 2 Sub-clause (1) as 'Code includes Rules' which is an inclusive definition and it is only to distinguish the term 'Code' which includes rules, the phrase employed in Section 128 is the 'body of the Code', It was therefore contended that as this rule modified by the Madhya Pradesh High Court was not inconsistent with the provisions of sections of the Civil Procedure Code, it could not be said to be invalid. Similarly even after the amendment as it is not inconsistent with the sections part of the Code of Civil Procedure, it could not be said that by operation of Section 97(1) of the Amendment Act Sub-rule (2) of Rule 11 as amended by this Court stood repealed. Learned counsel in support of his contention placed reliance on the observations made in 'Craies on Statute Law' that :

'It is difficult to frame exhaustive definition of words consequently, 33 the Court said in R. v. Hall (h) 'the meaning of ordinary words, when used in Acts of Parliament, is to be found, not so much in a strict etymological propriety of

language, nor even in popular use, as in the subject or occasion on which they are used, and the object which is intended to be attained. Similarly, Brett, M. R., said in *The Dunelm* (i) 3 'My view of an Act of Parliament which is made applicable to a large trade or business is that it should be construed, if possible, not according to the strictest and nicest interpretation at language, but according to a reasonable and business interpretation of it with regard to the trade or business with which it to dealing.'

and it was contended that the meaning which has to be given to the words will depend upon the scheme of the Act rather than the strict literary meaning of the words. Learned counsel also placed reliance on the decision reported in *Dy. Chief Controller of Imports and Exports, New Delhi v. K. T. Kosalram* (AIR 1971 SC 1283).

5. Learned counsel appearing for the non-applicant on the other hand contended that in fact even before the amendment this rule modified by the Madhya Pradesh High Court was inconsistent with the 'body of the Code' as according to the learned counsel the phrase 'body of the Code' appearing in Section 128 means sections plus the Schedule and was therefore ultra vires. He contended that in *State of U. P. v. Chandra Bhushan Misra*, (1980) 1 SCC 198: (AIR 1980 SC 591) their Lordships of the Supreme Court considered the meaning of the word 'Code' and held that 'Code' includes not only sections but also rules in the First Schedule; but learned counsel frankly conceded that that question is not before this Bench at present, He, however, contended that in Section 97(1) of the Amendment Act of 1976 the phrase 'principal Act' has occurred at two places and at both the places 'principal Act' would mean the Act inclusive of the Schedules and thus Sub-rule (2) of Rule 11 as amended by the Madhya Pradesh High Court is apparently inconsistent with Sub-rule (2) of Rule 11 as enacted in the Schedule after the amendment and thus will be invalid.

6. Part X of the Civil Procedure Code pertains to the chapter framing of rules, Section 121 lays down :

'The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.'

It therefore clearly provides that the rules in the First Schedule shall have the effect of law unless they are annulled or altered in accordance with the scheme of this Act. The language of Section 121 therefore clearly provides that BO long as no rules are framed in accordance with the scheme of this Chapter, the rules enacted in the First Schedule shall have the force of law. This therefore indicates that wide power has been conferred in the scheme of this Chapter to annul, alter or modify the rules which are enacted in the First Schedule.

7. Section 122 has conferred powers to make rules and it specifically provides that it may by such rules annul, alter, add to all or any one of the rules in the First Schedule. Section 122 reads:

'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.' A reading of this section therefore clearly indicates that what is contemplated is that so long as rules are not framed, altered or modified by the respective High Courts in accordance with the scheme of this Chapter the rules enacted in the First Schedule shall have force and once they are altered, modified or annulled in accordance with the scheme of this Chapter they shall replace the rules as enacted in the First Schedule, it is therefore clear that what is contemplated by the legislature is that the rules can be framed in accordance with this Chapter and these rules may even annul, modify or alter the rules which have been enacted in the First Schedule and so long as the rules are not framed in accordance with this Chapter the rules enacted in the First Schedule shall be in force. If the legislature intended that the rules framed in accordance with this Chapter shall not be inconsistent with the rules enacted in the First Schedule, the language in Sections 121 and 122 would not have been 'annul or alter' and in Section 122 they have even used the phrase 'annul, alter or add to all or any of the rules'. It therefore even contemplates change of all the rules in the First Schedule and it is in the context of this language used in Sections 121 and 122 that the language in Section 128 has to be understood.

8. Section 128(1) reads :

'Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.'

In this section the legislature used the phrase 'body of this Code' instead of using the word 'Code' only. Apparently the legislature omitted to use the term 'Code' as the Code has been defined in Section 2(1) to mean including rules and that is what their Lordships of the Supreme Court in (1980) 1 SCC 198 : (AIR 1980 SC 591 at p. 593) have observed :

'Section 2(1) of the Code of Civil Procedure, 1908 denned 'Code' as including 'rules'. Section 2(18) defined "rules' as meaning 'rules and forms contained in the first schedule or made under Section 122 or Section 125'. Section 121 of the 1903 Code declared that the rules in the First schedule shall have effect 'as if enacted in the body of the Code until annulled or altered in accordance with the provisions of Part X of the Code'. (Sections 121 to 131), Section 122 enabled the High Court to make rules from time to time 'regulating their own procedure or the procedure of the Civil Courts subject to their superintendence, and made by such rules, annul, alter or add to all or any of the rules in the First Schedule.' Section 126 made the rules made by the High Court subject to the previous approval of the government of the State. Section 127 provided that the rules as made and approved shall have the same force and effect as if they had been contained in the first schedule. These provisions make it abundantly clear that the rules made by a High Court altering the rules contained in the first schedule as originally enacted by the legislature shall have the same force and effect as if they had been contained in the first schedule and, therefore, necessarily became part of the expressions 'Code' and 'rules' and Sections 121, 122 and 127.' It is therefore clear that the legislature in Section 128 when used the phrase 'body of this Code' they wanted to refer to something else than the 'Code' itself. As the language of Sections 121 and 122 indicates that 'Code' will mean the sections and the First Schedule as modified by the High Court in accordance with this Part X, therefore, there could be nothing which could be said to be inconsistent with the 'Code' as wide powers

were sought to be conferred under this Part for alteration and annulment of the rules enacted in the First Schedule. Therefore the only meaning which could be attached to the phrase 'body of the Code' occurring in Section 128 would mean the sections part of the Code of Civil Procedure and not the schedule,

9. The language of Section 121 has in fact introduced a fiction by saying that the rules in the First Schedule shall have the same effect as if enacted in the body of the Code until they are annulled or altered. It therefore clearly goes to show that what was contemplated was that the rules in the schedule will have to be framed in accordance with the procedure of Part X but so long as that is not done, the rules in the First Schedule shall be deemed to be enacted in the body of the Code. In *Chandra Bhushan Misra v. Smt. Jayatri Devi* (AIR 1969 All 142) the Full Bench of the Allahabad High Court held (at Pp. 152 & 153):

'The word 'Code' wherever used in the Act, is defined by Section 2(1) as including rules. Section 2(18) defines 'rules' to mean 'rules and forms contained in the First Schedule or made under Section 122 or Section 125.' It is clear that wherever the word 'Code' is used in the Act of 1908, it includes not only the sections comprised in it but also rules and forms contained in the First Schedule as well as the rules and forms made by the High Courts under Section 122 or Section 125. It will be found that the Act used both expressions 'Code' and 'body of the Code'. The expression 'body of the Code' is not defined. But upon an analysis of the several provisions of the Act it will be clear that the expression 'body of the Code' is employed only where reference is intended to the sections of the Act. That that is so will appear from a perusal of the provisions of Sections 7, 8, 96, 100, 104, 121 and 128.

The sections mentioned above are jurisdictional provisions and having regard to their subject-matter the expression 'body of the Code' can refer to the sections only and not to the rules. The conclusion is reinforced if regard is had to Section 121 and Section 128. Section 121 declares that the rules in the First Schedule shall have effect 'as if enacted in the body of this Code'. Section 128 provides that the rules made by the High Court 'shall be not inconsistent with the provisions in the body of this Code', which rules by Section 127 are deemed to have the same

force and effect as if they had been contained in the First Schedule. It is clear from Sections 121 and 128 that the rules contained in the First Schedule and the rules framed by the High Courts are in fact outside the 'body of the Code', The sections alone therefore comprise the 'body of the Code'.

10. It was contended that apart from the interpretation of Section 128 in the scheme of Part X in the Amending Act Section 97(1) the term used is 'principal Act' in the beginning as well as in the end of this sub-clause and it was contended that therefore the meaning of the phrase 'principal Act' will be the same. Section 97(1) reads:

'Any amendment shall, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.' It will be pertinent to note that 'principal Act' no doubt has been used at two places in this provision but it has been used in different contexts as it appears from the context in which it has been used at two places. In the first sentence it talks of 'any amendment made or any provision inserted in the principal Act by State Legislature or a High Court.' We are concerned with the High Court in the present case. It is therefore clear that an amendment or an insertion of any provision is only possible by the High Court in the First Schedule and not in the sections and therefore it is clear that the words 'principal Act' in the first sentence in this provision mean the whole Act i.e. the 'Code' which means including rules whereas in the last sentence 'except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act', and it is very clear that the provisions of the principal Act which have been amended by this Act could only refer to the sections part of it as the schedule part is separate. Section 121 again has been retained in the amended Code and the schedule part is only considered to have been enacted by a deeming provision so long as it has not been annulled or altered in accordance with Part X. Thus for any amendment to the schedule the Amending Act is not necessary and it is in this context that the meaning of the phrase 'principal Act' occurring in this last sentence of Section 97(1) will have to be understood.

11. It is clear that the phrase 'principal Act' has not been defined and therefore this phrase has to be construed in the context. The words could not be interpreted on the basis of the meaning of the words only as was observed by Craies in the passage quoted above, relied on by the learned counsel for the petitioner. The problem of interpretation arises when the words are used which cannot be interpreted on the basis of the ordinary meaning. The intention of the legislature has to be found from the scheme and not the dictionary meaning of the word only. Lord Denning has analysed this position in the following words :

'The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature.'

In *Bidie v. General Accident, Fire and Life Assurance Corporation Ltd.* ((1948) 2 All ER 995) it was observed that :

'The real question which we have to decide is : what does the word mean in the context in which we find it here, both in the immediate context of the sub-section in which the word occurs and in the general context of the Act, having regard to the declared intention of the Act and the obvious evil that it is designed to remedy?'

and that is what has been held by the Supreme Court in *Deputy Chief Controller of Imports and Exports, New Delhi v. K. T. Kosalram* (AIR 1971 SC 1283) (at p. 1289) :

'In our opinion dictionary meanings, however, helpful in understanding the general sense of the words, cannot control where the scheme of the statute or the instrument considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instrument upon the basis of those definitions. What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject-matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author.'

It is therefore clear that the phrase 'principal Act' occurring in the last sentence of Section 97(1) refers to sections of the Code and not to the schedule and it is in this context we have to examine Sub-rule (2) of Rule 11 of Order 20 as amended by the High Court prior to the Amendment Act of 1976. It is not in dispute that if the phrase 'principal Act' occurring in the last sentence of Section 9(1) means the sections part of the Civil Procedure Code only then there is no inconsistency and therefore it could not be held that Sub-rule (2) of Rule 11 of Order 20 as amended by the Madhya Pradesh High Court is invalid. Thus our answer to the question referred to us is that in view of Section 97(1) of the Amendment Act of 1976 the amendment made in Sub-rule (2) of Rule 11 of Order 20 of the Civil Procedure Code 1908 amended by the Madhya Pradesh High Court does not stand repealed and it holds as a valid law even now.

12. In the light of the answer to the question referred to us the matter be placed before the learned single Judge who shall dispose of the revision petition. In the circumstances of the case parties are directed to bear their own costs.

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