

Kailashchandra and ors. Vs. District Judge and ors.

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Court : Madhya Pradesh

Decided On : Aug-17-1961

Reported in : AIR1963MP218

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : Madhya Pradesh Accomodation Control Act, 1955 - Sections 12; Code of Civil Procedure (CPC) - Sections 115; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Misc. Petn. No. 20 of 1961

Appellant : Kailashchandra and ors.

Respondent : District Judge and ors.

Advocate for Def. : R.S. Dabir and ; V.S. Dabir, Advs.

Advocate for Pet/Ap. : A.P. Sen and ;A.H. Saifi, Advs.

Disposition : Application dismissed

Judgement :

Dixit, C. J.

1. The petitioners in this case pray that a writ of certiorari be issued for quashing a decision of the Court of the District Judge, Bhopal, in an appeal against an order of the Rent Controlling Authority, Bhopal, fixing the fair rent of two shop premises

belonging to the applicants.

2. A preliminary point has been raised in this case that the petitioners should have filed a revision petition under Section 115 of the Civil Procedure Code against the decision of the Court of District Judge, and that as they did not avail themselves of the alternative remedy this application under Article 226 should not be entertained. In our opinion, this objection must prevail. Section 12 of the M.P. Accommodation Control Act, 1955 says:

'..... only one appeal shall lie against the decision given by the Rent Controlling Authority in the Court of the District Judge within thirty days of the decision and the decision of the Appellate Court shall be final.'

It is clear from the wording of Section 12 that an appeal lies to the Court of the District Judge and not to the District Judge acting as a *persona designata*. That means, the decision of the Court of the District Judge given in an appeal under Section 12 is open to revision under Section 115 of the Civil Procedure Code.

3. The law on this point is clearly established by the decisions of the Privy Council in *Secretary of State v. C. Rama Rao*, AIR 1916 PC 21, *Hem Singh v. Basant Das*, AIR 1936 PC 93, *Adaikappa v. Chandrasekhara*, AIR 1948 PC 12 and of the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Bros. Ltd.*, AIR 1953 SC 357. In all these cases, the rule laid down in *National Telephone Co. Ltd. v. Post Master General*, AIR 1913 AC 546, was quoted with approval. That rule was stated by Viscount Haldane L.C. in these terms:

'When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches.'

In AIR 1916 PC 21 (*supra*) the Privy Council considered a case in which an appeal was provided to the District Court against an order of the Forest Settlement Officer rejecting a claim made to a land in a reserved forest. The Forest Act did not provide for any further appeal. The Privy Council held that when proceedings

reached the District Court that Court was appealed to as one of the ordinary Courts of the country with regard to whose procedure, orders, and decrees the ordinary rules of the Civil Procedure Code applied. This decision of the Privy Council makes it abundantly clear that in the present case also the question of appeal or revision against the order of the Court of the District Judge made under Section 12 of the Accommodation Control Act would be governed by the Civil Procedure Code. Under Section 12 the appeal that is provided to the Court of the District Judge is to one of the ordinary and established Courts.

We are aware that in *Shrikrishna v. Badrilal*, Madh B LR 1953 Cir 144, it was held with reference to the analogous provision contained in Section 9 (3) of the Madhya Bharat Sthan Niyamtran Vidhan that Section 9 (3) confers special jurisdiction on the Court of the District Judge and that an appeal to that Court was not 'as a part of its ordinary jurisdiction or as an extension of it but as a Court of special jurisdiction'. We do not think this view is sound. The learned Judge of the Madhya Bharat High Court failed to notice that the Sthan Niyamtran Vidhan did not create a special Court or tribunal of appeal when it provided that an appeal shall lie against an order of the Rent Controlling Authority to the Court of the District Judge. The appeal was to a Court of ordinary jurisdiction and it was to a Court already established. We have no doubt that the decision given by the Court of the District Judge under Section 12 is one to which the ordinary incidents of the procedure of that Court apply.

4. New Section 12 also says that the decision of the Appellate Court shall be final. This only means that the decision of the Court of the District Judge shall not be appealable. It does not imply that it is not open to revision under Section 115 of the Civil Procedure Code. In numerous cases it has been held that whenever it is provided that a decision shall be final all that is meant is that the decision shall not be appealable and not that it would not be open to revision or review: see *Shrinivas v. Superintendent, Government Printing Press, Nagpur*, ILR (1944) Nag 540 : (AIR 1945 Nag 94), *Parthasarathy Naidu v. Koteswara Rao*, ILR 47 Mad 369 : (AIR 1924 Mad 561) (FB), *Phani Bhusan v. Sanat Kumar*, AIR 1935 Cal 773 and *Indian Homeopathic Medical Association, Calcutta v. Kanai Lal*, AIR 1950 Cal 263, in ILR 47 Mad 369 : (AIR 1924 Mad 561) (FB) (supra) the reason for giving this

meaning to the word 'final' was succinctly stated by Schwabe C.J. Under Section 57 of the Madras Local Boards Act, 1920 the decision of the Court of a District Judge or a Subordinate Judge in an election matter was made final. It was urged in the Madras High Court that this finality precluded any revision petition under Section 115 of the Civil Procedure Code. Repelling this contention the learned Chief Justice said:

'There is really no authority adduced in support of that proposition and, in my judgment, it would be quite contrary to the whole object and intention of Section 115 of the Code of Civil Procedure so to hold. That section only applies where there is no appeal. I know of no better way of directing that there shall be no appeal than by the legislature stating that the decision of a particular Court shall be final. It is the ordinary mode of expression used for the purpose in much of the legislation in England on which this legislation is founded; and, where the whole object of revision is to prevent a Court, from which there is no appeal, acting contrary to its jurisdiction, a finding that it is the law that, because the words used are 'the decision shall be final', a Court ordinarily subject to the revisional powers of this Court, should be permitted to act wholly without jurisdiction without the aggrieved party being entitled to any remedy, would in my judgment be untenable, and that would be the effect of deciding this second point in favour of the contention put forward.'

5. Shri Sen, learned counsel appearing for the petitioners, however, referred us to the decisions in *Hiralal v. Parasuramsao*, ILR (1941) Nag 581 : (AIR 1942 Nag 5), *Laxmanrao Deshmukh v. Collector of Nagpur*, ILR 1945 Nag 399 : (AIR 1945 Nag 146) and *Rajaram v. The State*, ILR (1951) Nag 741 : (AIR 1951 Nag 443) (FB), in support of the contention that the decision of the District Judge under Section 12 of the Act could not be revised under Section 115 of the Code. All these cases are clearly distinguishable. In ILR (1941) Nag 581 : (AIR 1942 Nag 5) (supra) it was held that no revision was competent against an order of the District Court made under Section 20 of the Relief of indebtedness Act, 1939. This conclusion was based on the express prohibition in Section 20 that 'no application for revision shall lie against such order'. The decision in ILR (1945) Nag 399 : (AIR 1945 Nag 146) (supra) that an order passed by the President of the Tribunal constituted under the

Nagpur Improvement Trust Act could not be revised under Section 115 of the Code of Civil Procedure was on the reasoning that the Tribunal was not a Court. The question whether when a provision makes an order of a Court final a revision petition can lie against that order did not arise for consideration in that case.

The third case, viz. ILR (1951) Nag 741 : (AIR 1951 Nag 443) (FB) (supra), in which it was observed that the decision of the District Judge passed in revision under Section 83 (3) of the C.P. and Berar Panchayats Act, 1946, was not open to revision under Section 115 of the Code of Civil Procedure, is also of no assistance. Section 83 (3) expressly says that the order of the District Judge shall be final and no application for revision or review thereof shall lie. On the other hand, the observation in that case that the power under Section 115 'is exercisable only in respect of decisions which have not been given finality by any law in the sense that the jurisdiction of the High Court to question them is not expressly barred' shows that in order to bar a revision under Section 115 there must be in the relevant provision express words to that effect. Here, there are no such words in Section 12 of the Act. In our opinion, an order made by the Court of the District Judge under Section 12 is revisable under Section 115 of the Code, and the decision of Krishnan J. in Naumal Bros. v. Alihussain. Kamarali, 1981 MPLJ 450, to that effect is correct.

6. Shri Sen then urged that this was a case in which this Court should interfere under Article 226 or Article 227. He relied on Satyanarayan v. Mallikarjun, AIR 1960 SC 137 as an authority for holding that the powers of the High Court under Article 227 are much wider than under Section 115 of the Code of Civil Procedure. We see no ground whatsoever for interfering in the matter under Article 225 or Article 227 when the applicants have not shown any valid reason for not resorting to the ordinary remedy of a revision petition open to them. That remedy was equally efficacious and expeditious.

In Satyanarayan's case, AIR 1960 SC 137 (supra) what the Supreme Court has said is that however wide the scope of Article 227 may be the High Court cannot in the exercise of its power under that article assume appellate powers to correct every mistake of law. In Waryam Singh v. Amarnath, AIR 1954 SC 215, the

Supreme Court observed that the power of superintendence conferred by Article 227 has to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting their errors. In Waryam Singh's case, AIR 1954 SC 215 (supra) reference was made to the observations of Harries C.J. to that effect in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee, AIR 1951 Cal 193 (SB). Harries C.J. in turn had relied on the observations of Rankin C. J. in Manmatha Nath v. Emperor, AIR 1933 Cal 132, where dealing with the power of the High Court under Section 107 of the Government of India Act, 1935 the learned Chief Justice said : (p. 134)

'..... superintendence is not a legal fiction whereby a High Court Judge is vested with omnipotence but is as Norman J. had said a term having a legal force and signification. The general superintendence which this Court has over all jurisdiction subject to appeal is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. It does not involve responsibility for the correctness of their decisions, either in fact or law.'

7. From the petition itself it is clear that there is no question of the exercise or non-exercise of jurisdiction by the Court of the District Judge; and the error that is said to be existing in the District Judge's decision is not one which can be described as an error apparent on the face of the record. The error is not revealed without any effort or arguments by the petitioners. There can therefore be no justification for interfering in this petition.

8. For these reasons this application is dismissed. The petitioners' prayer that this application itself be treated as a revision petition cannot be granted. It is open to them to file a separate revision petition. For that purpose, the certified copy of the order of the District Judge and other documents filed by the applicants be returned to them. In the circumstances of the case we make no order for costs. The outstanding amount of security shall be refunded to the petitioners.