

In Re: Reference U/S 113 of Civil Procedure Code by District Judge

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Court : Madhya Pradesh

Decided On : May-13-1994

Reported in : 1995(0)MPLJ94

Judge : U.L. Bhat, C.J. and ;M.V. Tamaskar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 and 115; Madhya Pradesh Code of Civil Procedure (CPC) (Amendment) Act, 1994 - Sections 115; Madhya Pradesh Code of Civil Procedure (CPC) (Amendment) Act, 1984 - Sections 115

Appeal No. : M.C.C. No. 298 of 1994

Appellant : In Re: Reference U/S 113 of Civil Procedure Code by District Judge;krishna Deo Singh

Advocate for Pet/Ap. : N.S. Kale, ;Ravish Agrawal, ;R.S. Tiwari, ;Deepak Verma, ;H.B. Agrawal and ;R.P. Jain, Advs.;A. Choudhary, Addl. Adv. General

Judgement :

ORDER

U.L. Bhat, C.J.

1. This reference is made by the District Judge, Jabalpur under Section 113 of the Code of Civil Procedure. We issued notices to the Advocate General, High Court Bar Association and the Jabalpur District Bar Association, indicating that we were

prepared to hear any counsel who may examine the legal position and make a useful contribution to the decision on the question referred to.

2. We have heard Shri N. S. Kale, Shri Ravish Agrawal, Shri R. S. Tiwari, Shri Deepak Verma, Shri H. B. Agrawal, Shri R. P. Jain and the Addl. Advocate General Shri Anoop Choudhary.

3. Section 115 of the Code of Civil Procedure (for short the Code) confers on the High Court what is known as revisional power. The power consists of calling for the record of the case which has been decided by any Court subordinate to the High Court and in which no appeal lies and the subordinate Court appears to have exercised jurisdiction not vested in it by law or to have failed to exercise jurisdiction so vested or to have acted in exercise of jurisdiction illegally or in material irregularity. High Court is empowered to make any such order as it thinks fit. The proviso introduced by the Amending Act of 1976 imposed further restrictions on the power of the High Court.

4. By the Code of Civil Procedure (Madhya Pradesh Amendment) Act, 29/1984 (for short the 1984 Amending Act), which came into force on 18-8-1984, Section 115 was amended. Revisional power of the High Court in cases arising out of original suits or other proceedings of the value of Rs. 20,000/- and above was left intact and revisional power in other cases was conferred on the District Judge. In *Ramchandra Jagannath and Ors. v. Dattatraya Shankarrao and another*, 1986 MPLJ 406, a Full Bench of this Court held that all revision petitions pending in the High Court on 14-8-1984 had to be disposed of by the High Court and with effect from that date, revision petitions against orders passed by subordinate courts either before or after that date could be filed only before the District Judges. The Full Bench approved the two earlier decisions of the Division Benches in *Gayaprasad and Anr v. Deepchand and another*, 1986 MPLJ 524 and in *Pirbux v. Babulal Dwarka*, 1986 MPLJ 720.

5. By the Code of Civil Procedure (M. P. Amending Act) 4/1994, Section 115 has been substituted, restoring the provision as it was before the 1984 Amending Act came into force on 16-4-1994.

6. The District Judge reported that a large number of Civil Revisions are pending in the District Court as on 16-3-1994. He has referred the following question :

'Whether the District Court has jurisdiction to decide the civil revisions pending in the District Court just before and at the time of coming into force the Amending Act No. 4 of 1994 in respect of orders passed by subordinate courts when District Judge had no revisional jurisdiction.'

7. It is necessary to appreciate the exact scope of right of suit, right of appeal and 'right' of revision. There is an inherent right in every person to bring a suit of a civil nature unless the suit is barred by any statutory provision. A suit for its maintainability requires no authority of law and it is enough if no statute bars the suit. A right of appeal inheres in every party and must have for its maintainability clear authority of law. In other words, right of appeal is a creature of statute. If there is statutory provision regarding appeal, subject to those provisions, a party has a right of appeal. This principle can be illustrated by referring to Section 96 of the Code which states, inter alia, 'an appeal shall lie from every decree...' Statutory right of appeal is a matter of substantive right and not merely a matter of procedural law or adjectival law. This right becomes vested in a party when proceedings are first initiated and such right could not be taken away except by express provision or provision containing necessary implication. There is a distinction between taking away right of appeal and changing the forum of appeal. A change of forum is a matter of procedural law and not of substantive law and operates retrospectively. A litigant has to come to the new forum even if the cause- of action accrued prior to change of forum. See *Garikapati Veeraya v. N. Subbiah Choudhary and others*, AIR 1957 SC 540; *Jose Da Costa and Anr v. Bascora Sadeshiva Sinai Narcornin and others*, AIR 1975 SC 1843 and *New India Assurance Co. Ltd. v. Smt. Shanti Mishra*, AIR 1976 SC 237.

8. 'Right', if it may be so regarded, of revision, is quite different from the right of appeal. A superior court may be conferred with power to correct errors committed by an inferior court. In a larger sense, it can be said that jurisdiction of revisional Court is part of general appellate jurisdiction of the superior court over inferior courts. Nevertheless, supervisory revisional jurisdiction cannot be equated with

appellate jurisdiction. The revisional jurisdiction is of a very limited nature in comparison with appellate jurisdiction. Legal pursuit of a suit, appeal or second appeal are steps in a series of proceedings connected by an intrinsic unity. In that sense, an appeal is regarded as a continuation of a suit or original proceeding, but revision petition is not regarded as continuation of suit or original proceedings. Right of appeal is a substantive right, while right of revision is not so. To illustrate this proposition, we may advert to the language of Section 115 of the Code. It does not say that a revision shall lie from an order of subordinate Court, nor does it say that an unsuccessful litigant shall have a right to file a revision. The provision merely enables the High Court to call for the record of any subordinate Court and make such order in case it thinks fit in cases of error of the nature contemplated under the provision and subject to other limitations contained in the provision. Of course the power of the High Court can be exercised either suo motu or when jurisdiction is invoked by a litigant. Nevertheless, revisional jurisdiction is quite different in quality, content and nature from appellate jurisdiction. While a person who institutes a suit has a vested right of appeal as per the law on the date of institution, he has no vested right of revision since revision is not a continuation of suit and relates to procedural law. See *Keshavlal Jathalal Shah v. Mohanlal Bhagwandas and another*, AIR 1968 SC 1336; *Vishesh Kumar v. Shanti Prasad*, AIR 1980 SC 892 and *Shri Vishnu Awatar v. Shiv Autar and others*, AIR 1980 SC 1575.

9. A party may have a vested right of an action, but not a vested right of forum. Change of procedural law operates retrospectively and an aggrieved person has to come to a new forum even if his cause of action accrued prior to change of forum, unless by express words, the new forum is made available, only to the causes of action arising after the creation of the forum. See *New India Assurance Co. Ltd. v. Smt. Shanti Misra*, AIR 1976 SC 237. Procedural amendments of law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they came into force even though the action may have begun earlier or the claim on which the action may be based, may be of anterior date. See *Memon Abdul Karim Haji Tayab v. Dy. Custodian General, New Delhi and others*, AIR 1964 SC 1256.

10. In regard to revisions arising out of original suits or other proceedings of the value below Rs. 20,000.00, the revisional power of the High Court was taken away and conferred on the District Judges in 1984. The three decisions of this Court reported in 1986 MPLJ and referred to already held that the 1984 amendment of Section 115 of the Code operated retrospectively and that revision petitions in regard to matters covered by the change of forum could be filed only before the District Judge even if the cause of action arose prior to the coming into force of the amendment. But the decisions did not hold that matters pending in the High Court on the crucial date could not be decided by the High Court and could be decided only by the District Judge. The 1994 amendment merely restores status quo ante as it existed before the 1984 amendment. The power of the District Judge has been taken away and restored to the High Court. The amendment is one in the domain of procedural law. There is no specific provision in the 1994 Amendment Act indicating legislative intention to the effect that the amendment would act only prospectively, nor is there anything in the provision from which such an intention can be gathered. The amendment has retrospective effect in the sense that if an aggrieved party has not filed revision before the District Judge before 15-3-1994, he cannot thereafter file revision before the District Judge, but is required to file it before the High Court even though the suit or proceeding in which the order was passed was instituted prior to the amendment and the order sought to be impugned was passed prior to the amendment. There is no provision in the Act taking away the jurisdiction of the District Judge to decide the revision pending before that forum on 16-3-1994, nor can such an intention be inferred from any provision of the 1994 Amending Act. The power of the District Judges to deal with the revisions pending on 16-3-1994 has not been taken away.

11. In *Mohd. Idris v. Sat Narain*, AIR 1986 SC 1499, though there was express repeal of the section, by the aid of Section 6 of General Clauses Act, it was held that the pending proceedings were not affected. In the instant case, the provision is silent. Yet the principle as stated below will apply.

'The addition of this section clearly shows that by the conferral of the jurisdiction upon the Assistant Collector it was not intended to upset litigation pending before appropriate authorities when the Abolition Act came into force. Section 23 in terms

must apply to the present case, because if it had remained pending before the Munsif till 1956, it is clear, the jurisdiction of the Munsif would not have been ousted. Although it was not pending before the Munsif it was pending before the appellate Court when the 1956 Amendment Act was passed. It follows, therefore, that to such a suit the provisions of Schedule II read with Section 200 of the Abolition Act cannot be applied because the Legislature has in 1956 said expressly what was implicit before, namely, that pending actions would be governed by the old law as if the new law had not been passed. In our judgment, therefore, the proceedings before the Munsif were with jurisdiction because they were not affected by the passing of the Abolition Act or the Amending Act, 1953, regard being had to the provisions of Section 6 of the U. P. General Clauses Act in the first instance and more so in view of the provisions of Section 23 of the Amending Act, 1956 which came before the proceedings between the parties had finally terminated.'

In *Manujendra Dutt v. Furnadu Prosad Ray Chowdhury*, AIR 1967 SC 1419 the Supreme Court had occasion to consider the similar question and it was decided thus :

'(4) Mr. Agrawal for the appellant, at first raised four contentions before us, viz.,

(1) whether Section 3 of the Act deprived a tenant of his rights under the lease,

(2) whether the Controller had jurisdiction to proceed with the case after the deletion of Section 29 from the Act;

(3) whether there was a renewal of the said lease and

(4) whether the appellant could be evicted on the ground of sub-letting even though the said lease expressly permitted him to sub-let. However, in view of the fact that only two of these contentions, viz., regarding jurisdiction and notice had been pressed before the High Court he confined his arguments on those two questions only. The contention of Mr. Agrawal was that since it was only by reason of Section 29 that the suit had been transferred to the Controller the deletion of that section from the Act by Section 8 of the Amendment Act of 1953 had the

effect of depriving the Controller of his jurisdiction to try the suit and therefore, the judgment and order passed by him though confirmed by the learned Subordinate Judge and the High Court was without jurisdiction and therefore bad. In our view, this contention has no force. Though Section 29 was deleted by the Amendment Act of 1953, the deletion would not affect pending proceedings and would not deprive the Controller of his jurisdiction to try such proceedings pending before him at the date when the Amendment Act came into force. Though the Amendment Act did not contain any saving clause, under Section 8 of the Bengal General Clauses Act, 1899, the transfer of the suit having been lawfully made under Section 29 of the Act its deletion would not have the effect of altering the law applicable to the claim in the litigation. There is nothing in section .8 of the Amending Act of 1953 suggesting a different intention and therefore the deletion would not affect the previous operation of Section 5 of the Calcutta Thika Tenancy Act or the transfer of the suit to the Controller or anything duly done under Section

29. That being the correct position in law the High Court was right in holding that in spite of the deletion of Section 29, the Controller still had the jurisdiction to proceed with the said suit transferred to him.'

12. In the light of the above discussion, we hold as follows :

(i) District Judges have exclusive power of deciding revision petitions pending before them on 16-3-1994.

(ii) With effect from 16-3-1994, revision petitions under Section 115 of the Code can be filed only before the High Court and not before the District Judge, whether or not the orders sought to be impugned were passed before or after 15-3-1994. We are supported in this conclusion by the reasoning of the Supreme Court in Vishesh Kumar v. Shanti Prasad, AIR 1980 SC 892; Shri Vishnu Awatar v. Shiv Autar and others, AIR 1980 SC 1575; Full Bench decision of this Court in Ramchandra Jagannath and Ors. v. Dattatraya Shankarrao and another, 1986 MPLJ 406 and F. B. decision of Allhabad High Court in Harprasad Singh and Ors. v. Ramswarup and others, AIR 1973 All. 390.

13. Reference answered accordingly.

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