

**Surinder Singh Vs. Sohan Singh**

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**Court :** Delhi

**Decided On :** Jan-25-1985

**Reported in :** AIR1986Delhi293; 28(1985)DLT28

**Judge :** J.D. Jain, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 21

**Appeal No. :** Regular Appeal No. 30 of 1984 and Civil Revision No. 977 of 1983

**Appellant :** Surinder Singh

**Respondent :** Sohan Singh

**Advocate for Pet/Ap. :** S.N. Mehta,; S.K. Mittal and; I.D. Garg, Advs

**Judgement :**

**J.D. Jain, J.**

(1) This is an application for review of my order dated 3rd May 1984. The review is sought by the respondent Maj. Sohan Singh Aurora (hereinafter referred to as the respondent) on the ground that the said order was made by me without noticing the provisions contained in Section 21(2) of the Code of Civil Procedure (for short 'the Code') and as such it suffers from a legal infirmity.

(2) The facts of the case have been given at considerable length in my order under review and I need not recapitulate the same. While setting aside the order of remand dated 25th May 1981 passed by Shri S.R. Goel, Additional District Judge and directing that the suit be re-tried and disposed of by an Additional District Judge, I also quashed the entire proceedings subsequent to the aforesaid remand order as being without jurisdiction. The said proceedings were taken in the court of Subordinate Judge who as observed in my order under review, had pecuniary jurisdiction to try suits of the value up to Rs. 25000.00 only whereas the value of the suit after its amendment had been enhanced to Rs. 40000.00 .

(3) Counsel for the respondent has now invited my attention to Section 21 of the Code which runs as under :

'21(1).No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.

(2)No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement and unless there has been a consequent failure of justice.

(3)No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there on has been a consequent failure of justice.

(4) It may be noticed that sub-sections (2) & (3) in the Section have been added by the Code of Civil Procedure (Amendment) Act 1976. Prior to that only sub-section (1) thereof constituted Section 21. Obviously new sub- sections (2) & (3) are similar to the provisions of old Section 21 and they have been included to do away with the objections as regards pecuniary jurisdiction if not raised at the earliest opportunity. On a plain reading of sub-section (2) it is manifest that two conditions

must be satisfied before an objection to the pecuniary limits of the jurisdiction of a court can be sustained and prove fatal. These are : (1) that the objection must have been taken in the court of the first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and (2) that there must have been a consequent failure of justice.

(5) Obviously Section 21 is an exception to the well established rule that where the court has no inherent jurisdiction over the subject-matter of the suit, its decree is a nullity even though the parties may have consented to the jurisdiction of the court. In *Kiran Singh and others v. Chaman Paswan & others*, : [1955]1SCR117 , while saying that 'It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the state of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.', the Supreme Court observed that :

'WITH reference to objections relation to territorial jurisdiction, section 21 of the Civil Procedure Code exacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a consequent failure of Justice. It is the same principle that has been adopted in section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying section 21 and 99, Civil Procedure Code . and section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on merits.'

(6) Since the aforesaid provisions of sub-section (2) of section 21 were not brought to my notice at the time. I made the order under review, I quashed the proceedings on the basis of general principles of law with regard to the legality of the

proceedings of a court not competent to try the suit for want of requisite pecuniary jurisdiction. The learned counsel for the respondent has, therefore, canvassed that in view of the specific provisions contained in subsection (2) that an objection to the pecuniary jurisdiction of a court must be raised at the earliest stage of proceedings in a suit and that it must be further shown that some prejudice has resulted to the aggrieved party before the proceedings of the court not having requisite pecuniary jurisdiction can be set aside, the petitioner was debarred from raising such a plea in the revision for the first time. In the instant case after the order of remand dated 25th May 1981 of Shri S.R. Goel a written statement was filed to the amended plaint by the petitioner. Thereafter replication was filed by the respondent and issues were re-framed by the court of the Subordinate Judge on 3rd September 1981. Thereafter about half a dozen witnesses of the respondent were examined and cross-examined but no objection was ever raised by the petitioner to the pecuniary limits of the court's jurisdiction. It was only in the revision petition (C.R. 977/83) which was filed by the petitioner in this court that he raised the objection regarding the pecuniary limits of the court of Subordinate Judge for the first time.

(7) In view of the explicit bar contained in sub-section (2) of section 21, there is considerable merit in this contention of the learned counsel for the respondent. Certainly if the said provision of law had been brought to the notice of this Court, the proceedings before the Sub Judge after the order of remand dated 25th May 1981 of Shri S.R. Goel, Additional District Judge, would not have been quashed, especially when the trial of the suit was still in progress and there could be no question of failure of justice consequent upon the same. The submission of the learned counsel for the petitioner, however is that fresh pleas have been raised and new issues have been framed by the learned Sub Judge which are contrary to the order made by Shri (now Hon'ble Mr. Justice) M.K. Chawla, Additional District Judge and as such he has been prejudiced by the said proceedings. I need not, at this stage, go into this aspect of the matter because the suit is not being tried by a court of competent jurisdiction and it will be open to the court to examine for itself whether any contravention of the order of Shri M.K. Chawla has occurred and if so, he can surely rectify the error. However, as for proceedings conducted by the learned Sub-Judge, my previous order quashing the same needs to be reviewed

and the entire proceedings including recording of evidence which took place in the court of the sub-Judge subsequent to remand order dated 25th May 1981 shall be deemed to be valid except to the extent indicated above.

(8) Before concluding, I may also dispose of the objection of the petitioner, which is apparently of preliminary nature, to the maintainability of the review petition. It is urged that the mere fact that the order under review is wrong on a point of law will not, according to well established principles, furnish a ground for review by the court, more so when no new and important matter of evidence has been discovered. In other words, the mere fact that the particular provision of law viz. sub-section (2) of section 21 of the code was not considered at the time of the previous order will not justify interference by this court by way of review. However I am not persuaded to accept this contention because the erroneous decision on a point of law in the sense that the court has taken a view on a point of law which is erroneous is quite different from a case where specific provision of law having bearing on the controversy between the parties has not been considered at all. May be because it was not within the knowledge of counsel for the parties or for that matter the court itself Hence, it is brought to the notice of the court that there was a specific provision of law interdiction an appellate or revisional court to entertain the plea of want of pecuniary jurisdiction and the provision does effect the merits of the earlier decision, the court would be failing in its duty if it refuses to rectify the error on purely technical grounds. Indeed, this point is no longer rest integra inasmuch as in Sir Hari Sankar Pal and another v. Anath Nath Mitter and others , it was held that:

'.....A decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the Court disposes of a case without adverting to or applying its mind to a provision of law which given it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order Xlvii Rule I, Civil Procedure Code.'

(9) In the instant case too, there was a clear omission on the part of the court to consider the explicit provision of sub-section (2) of section 21 of the Code when I passed the order under review. Hence, the interests of justice demand that I rectify the error and bring my order in conformity with the letter and spirit of law contained therein

(10) As a result, I allow this review application and modify my order dated 3rd May 1984 by deleting the following there from :

'IN consequence thereof the entire proceedings subsequent to the remand order are also quashed.'

(11) It is further clarified that the proceedings conducted by the Subordinate Judge subsequent to the remand order dated 25th May 1981 shall be deemed to be proceedings in the suit for all intents and purposes but it shall open to the learned Additional District Judge to consider the objection of the petitioner that the learned Subordinate Judge has contravened the order dated 2nd February 1981 of Shri (now Hon'ble Mr. Justice) M.K. Chawla, Additional District Judge, by permitting fresh pleas etc. and afford any relief to the parties which he may deem just and proper in accordance with law.

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