

Nanda Vs. the District Judge, Jaipur Dist., Jaipur and ors.

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Court : Rajasthan

Decided On : Sep-12-1971

Reported in : AIR1973Raj116

Judge : V.P. Tyagi, J.

Acts : Rajasthan Relief of Agricultural Indebtedness Act, 1957 - Sections 17; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : Civil Writ Petn. No. 1185 of 1971

Appellant : Nanda

Respondent : The District Judge, Jaipur Dist., Jaipur and ors.

Advocate for Def. : M.D. Purohit, Dy. Govt. Adv.

Advocate for Pet/Ap. : M.M. Singhvi, Adv.

Disposition : Petition allowed

Judgement :
ORDER

V.P. Tyagi, J.

1. This writ petition of petitioner Nanda arises out of the following circumstances:

An application under Section 6 of the Raiasthan Relief of Agricultural Indebtedness Act, 1957 (hereinafter called the Act) was filed by creditor Kanhaiyalal, husband of respondent No. 3 Smt, Gulab Devi, in the Court of Civil Judge, Jaipur District. Jaipur, alleging that Rs. 4,500/- were advanced by the creditor by way of loan to petitioner Nanda on the basis of a pronote and a receipt executed by the debtor in favour of the creditor and as the debtor was an agriculturist therefore, it was prayed that the loan advanced to Nanda may be determined under the provisions of the Act. Petitioner Nanda denied to have received any loan from Kanhaiyalal and executed any pronote in favour of the creditor. The Debt Relief Court after recording the statements of the creditor Kanhaiyalal and the scribe Shivdayal and also examining the witnesses produced by the debtor came to the conclusion that debtor Nanda did not receive any loan by executing the pronote or the receipt in favour of creditor Kanhaiyalal and therefore, it dismissed the application filed by Kanhaiyalal.

2. Having felt aggrieved by the order of the learned Civil Judge, Kanhaiyalal deceased filed a revision petition in the Court of the District Judge. Jaipur District. Jaipur. The learned Judge, after hearing the parties, set aside the order of the Debt Relief Court holding that the pronote was executed by the debtor in favour of the creditor and the case was remanded to the Debt Relief Court with a direction that the Court may proceed to determine the debt in accordance with, the provisions of the Act. This judgment of the learned District Judge has been challenged by the debtor-petitioner, inter alia, on the ground that the facts determined by the Debt Relief Court about the execution of the pronote in favour of the creditor could not be set aside by the learned District Judge while exercising jurisdiction under Section 17 of the Act which, according to learned counsel for the petitioner, is a very limited jurisdiction. Besides this objection, various other objections were taken by the petitioner to impugn the judgment of the learned District Judge, but I need not discuss them here as this petition can be disposed of by deciding the objection regarding the scope of jurisdiction of the learned Judge under Section 17 of the Act.

3. Learned counsel appearing on behalf of the respondent has argued that the judgment of the learned District Judge is a well-reasoned judgment and the

evidence produced by the debtor before the Debt Relief Court has been rightly rejected by the said Court which the learned District Judge had the power to do while exercising his revisional jurisdiction under Section 17 of the Act; the inferences, therefore, drawn by the learned District Judge cannot be said to be perverse and this Court in the exercise of its extraordinary jurisdiction should not interfere with the judgment of the revisional Court.

4. In the scheme of the Act the legislature has not provided any right of appeal to the parties against the order passed by the Debt Relief Court. If any party felt aggrieved by the order of the Debt Relief Court, then the only remedy available to the aggrieved party is to file a revision application in the Court of the District Judge under Section 17 of the Act. The District Judge under this provision of the Act has power to revise the order of the Debt Relief Court only on any one of the following three grounds:

(a) that the order is contrary to law;

(b) that the Court has exercised a Jurisdiction not vested in it by law or has failed to exercise a jurisdiction vest-ed in it by law;

(c) that the Instalments fixed under Sub-section (3) of Section 11 are inequitable.

In Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras. 76 Ind App 67 = (AIR 1949 PC 156) their Lordships of the Privy Council have expressed that 'where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final'.

5. The Supreme Court In Hari Shankar v. Rao Girdhari Lal Chowdhury. AIR 1963 SC 698, while examining the scope of revisional jurisdiction of the High Court under the Delhi and Ajmer Rent (Control) Act (38 of 1952), observed as follows:

'The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as has been done in second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a

particular case has been decided according to law. Under Section 115 of the Civil P. C. the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit'.

Their Lordships further observed that under Section 35 (of that Act) High Court cannot interfere with a plain finding of fact arrived at by the Court below. It cannot reassess the value of evidence and substitute its own conclusions of fact in place of those reached by the Court below.

6. These observations of the Supreme Court relate to the power of a Court exercising the revisional jurisdiction under Section 35 of the Delhi and Ameer Rent (Control) Act. This power was conferred on the revising Court to examine whether the order impugned was made by a subordinate Court according to law. The expression 'according to law' referred therein is wider in scope than the phrase 'contrary to law' as used in Section 17 of the Act. In order to examine whether a particular decision is 'according to law' or not the Court has to see the decision as a whole as suggested by the learned Judges of the Supreme Court. When this power of the High Court under Section 35 was compared by the Supreme Court with the power exercised by it under Section 115 of the Code of Civil Procedure, their Lordships observed as follows:

'The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But It must not be overlooked that the section -- in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit, -- is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is 'according to law'. It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be

no further appeal'.

From this scheme of Section 35 of that Act with which the Supreme Court was concerned, the learned Judges were definitely of opinion that the High Court was not justified in interfering with the plain finding of fact. In *Malini Ayyappa Naicker v. Firm Manghraj Udhavdas*, AIR 1969 SC 1344 this question again came up for the consideration of the Supreme Court in connection with the scope of the first proviso to Section 75(1) of the Provincial Insolvency Act (1920) which conferred a power in the High Court analogous to the power of revision but not of appeal. In that case, the question that was posed for the determination of the Supreme Court was whether the finding of the District Court in an appeal regarding the genuineness of the mortgage transactions which undoubtedly were the findings of fact could be made open to review by the High Court acting under the first proviso to Section 75(1) of the Provincial Insolvency Act. The learned Judges of the Supreme Court in that context made the following observations:

'Quite clearly the legislature did not confer on the High Court under the 1st proviso to Section 75(1) of the Act an appellate power nor did it confer on it a jurisdiction to re-appreciate the evidence on record. While exercising that power the High Court is by and large bound by the findings of fact reached by the District Court. If the legislature intended to confer power on it to re-examine both questions of law and fact it would have conveyed its intention by appropriate words as has been done under various other statutes. A wrong decision on facts by a competent Court is also a decision according to law'.

7. While examining the scope of the first proviso to Section 75(1), their Lordships also considered the scope of the term 'contrary to law' as used in Section 100(1)(a) of the Code of Civil Procedure and the learned Judges were of a definite view that the term 'con-trary to law' is not the same thing as a decision being not 'according to law'. The latter expression, in the opinion of the learned Judges, was wider in ambit than the former. The power given to the High Court under the first proviso to Section 75(1) of the Provincial Insolvency Act, which was similar to the power given to the High Court under Section 25 of the Provincial Small Cause Courts Act, was examined by the learned Judges of the Supreme Court in the light

of the observations of Beaumont, C. J. in *Bell & Co. Ltd. v. Waman Hemraj*. AIR 1938 Bom 223 and the learned Judges were of opinion that the following observations of Beaumont, Chief Justice, were a correct statement of law. The learned Chief Justice of the Bombay High Court expressed his opinion about the scope of Section 25 in the following language :

'The objection of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt any exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at'.

These authorities clearly go to indicate that the Court which exercises power of revision cannot act as a Court of Appeal to disturb the finding of fact arrived at by the subordinate Court unless a mani-fest injustice has been done to a party who feels aggrieved by the impugned order. Under the scheme of Section 17 of the Act the District Judge has been empowered to revise the judgment of the Debt Relief Court when he finds that the order impugned is made contrary to law. As the Supreme Court has laid down that the term 'contrary to law' is not as wide as the term 'according to law.' This Court in *Kundanlal v. Shobharam*, (Civil Writ Petn No. 1249 of 1971. decided on 30-8-1972 (Raj)) has discussed the scope of the power of the District Judge to revise the order under Section 17 of the Act and has observed thus: 'If the District Judge feels that the circumstances brought on the record can lead to a conclusion different from what has been recorded by the Debt

Relief Court even then it has no jurisdiction to interfere with the order because every erroneous conclusion does not necessarily fall within the expression 'order contrary to law'.

The expression 'contrary to law' covers an order passed in disregard of the provisions of law applicable to the facts and circumstances of a particular case or when a relevant law applicable to the case has been misinterpreted or mis-applied by the subordinate Court. Every erroneous judgment cannot, therefore, fall within the expression 'order contrary to law.'

8. In the instant case, the Debt Relief Court has given very elaborate and convincing reasons to reach the conclusion that the pronote and the receipt on which the creditor has based his claim were not executed by the debtor. The learned District Judge, while setting aside this pure finding of fact recorded by the Debt Relief Court, has not given any reasons to disbelieve the evidence of the debtor or of his witnesses, nor does he hold that the evidence of the debtor was not admissible in law or that it was irrelevant. In such circumstances it was not open for the revisional Court to interfere with the findings of fact merely because the revisional Court was of opinion that the evidence could lead to the inferences different from what have been drawn by the Debt Relief Court. In my opinion, the finding of fact recorded by the trial Court could not be disturbed by the revisional Court simply on the ground that a different conclusion could be drawn from the facts brought on the record. There is no doubt that the power of revision under Section 17 of the Act is wider than the power exercised by the High Court under Section 115 of the Code of Civil Procedure but this revisional power is all the same limited by the expression that the findings of the original Court are open to review only when the judgment is contrary to law. As observed above, the erroneous order of a Court competent to decide the issue cannot be called an order contrary to law simply because the revisional Court wants to arrive at a conclusion different from that of the trial Court. If the facts are capable of leading the revisional Court to arrive at a different conclusion, even then the decision of the subordinate Court would not be called a decision contrary to law, and the revisional Court will have no power under Section 17 of the Act to exercise the jurisdiction conferred thereunder to disturb the pure finding of fact.

9. For the reasons mentioned above, the order passed by the DistrictJudge is quashed. The writ petition is, therefore, allowed. No order as to costs.

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