Seth Gulab Chand

Vs

Seth Kudilal and Another

Civil Appeal No. 230 of 1953

(CJI S. R. Dass, Vivian Bose, T. L. Venkatarama Ayyar, S. K. Das, A. K. Sarkar JJ)

28.03.1958

JUDGMENT

SARKAR J. -

The Princely States that existed in British India, merged themselves in the Union of India not very long after India became independent. Before the merger some of these States passed through certain stages which may be called transitional. The decision of this appeal depends on certain laws that came into existence during the transitional stage through which the Princely State of Indore passed before it became merged in the Indian Union.

Up to April 22, 1948, Indore as one of the Princely States of India enjoyed internal sovereign rights and had its own laws and courts. These laws and courts derived their authority from the Ruler of Indore in whom the sovereign power was vested. The highest court in Indore was called the High Court.

The suit out of which this appeal arises was filed by the appellant against the respondents in the Indore High Court on November 6, 1947. It was a suit for the specific performance of an agreement whereby it is said, Govindram Sakasaria, whose heirs and legal representatives the respondents are, agreed to sell to the appellant a share in a business. The said Govindram Sakasaria having died prior to the suit it was brought against the respondents.

On April 22, 1948, the Rulers of Gwalior, Indore and certain other States in the region known as Malwa (Madhya-Bharat) entered into a Covenant to unite and integrate their territories in one State with a common executive, legislature and judiciary, by the name of the United State of Gwalior, Indore and Malwa (Madhya-Bharat) and to include in that United State any other State the Ruler of which later agreed with the approval of the Government of India, to merge his State in the United State. Article 3 of the Covenant provided for the constitution of a Council of Rulers one of the members of which was to be its President, such President being called the Rajpramukh. It also provided that the Ruler of Gwalior would be the first Raj Pramukh of the United State. Under art. 6 of the Covenant, the Ruler of each covenanting State was required to make over the administration of his State to the Raj Pramukh by a date not latter than July 1, 1948. This article also provided that upon the administration of a State being made over to the Raj Pramukh, all rights, authority and jurisdiction belonging to its Ruler and appertaining or incidental to its Government, would vest in the United State. Similar provision was also made in respect of the vesting of the rights, authority and jurisdiction of the Ruler of a State which by a subsequent agreement became included in the United State. Article 10 provided that as soon as practicable a Constituent Assembly for the United State would be formed in the manner indicated, for framing its Constitution and that the Raj

Pramukh would by August 1, 1948, constitute an interim Legislative Assembly. It also provided that until the Constitution framed by the Constituent Assembly came into operation, the Raj Pramukh would have the power to make and promulgate ordinances for the peace and good Government of the United State but such ordinances would have force for a period not longer than six months from its promulgation and would be liable to be controlled or superseded by an Act of the interim Legislative Assembly. As a matter of interest it may be mentioned here, though nothing turns on that in this appeal, that the United State later became a Part B State as defined in the Constitution of India and lastly, merged in the territories of what is now the State of Madhya Pradesh.

The suit brought by the appellant was heard by a single Judge of the Indore High Court who decreed it by his judgment pronounced on June 11, 1948. It was five days after this judgment had been pronounced, namely, on June 16, 1948, that the Ruler of Indore made over the administration of his State to the Raj Pramukh of the United State in terms of the Covenant. It appears, however, that the High Court of Indore continued functioning even thereafter. On June 19, 1948, the Raj Pramukh promulgated Ordinance No. 2 of 1948 to provide for the establishment of a High Court for the United State. Section 2 of the ordinance provided that it would come into force on such date as the Raj pramukh might prescribe and the Raj Pramukh by a Notification published on July 28, 1948, prescribed July 29, 1948, as such date. On Ordinance No. 2 of 1948 so coming into force on July 19, 1948, the High Court of the State of Indore ceased to function from that date. Section 35 of the ordinance provided that on the taking over of the administration of any State by the Raj Pramukh its High Court would cease to exist and all cases pending before it would be transferred to the High Court of the United State established by the ordinance. The provisions of this section were found to be anomalous in the cases of States like Indore, where the administration had been taken over sometime before the Ordinance had come into force and the High Court under it established, for in regard to these States the cases pending in the State High Courts could not on the dates their administration was taken over, be transferred to the United State High Court as it had not then come into existence. To remedy this anomaly, on October 16, 1948, the Raj Pramukh promulgated ordinance No. 14 of 1948. This ordinance replaced section 35 in Ordinance 2 of 1948 by a new section and provided that it would be deemed to have always been so replaced. The new section provided that in the case of any State whose administration had been taken over by the Raj Pramukh before the establishment of the High Court of the United State, the High Court of the State would cease to exist and function from the date of such establishment and thereupon all cases pending before the High Court of the State would be transferred to the High Court of the United State and the appeals which would have lain to the High Court of the State would lie to the High Court of the United State.

Before Ordinance No. 14 of 1948 had been promulgated, the respondents on August 24, 1948, preferred an appeal to the Divisional Bench of the High Court of the United State from the decision of the High Court of Indore decreeing the appellant's suit on June 11, 1948, to which reference has been made earlier. A few days later, namely, on September 7, 1948, the appellant also preferred a cross-appeal to the Divisional Bench against the same decision. On December 2, 1948, the Divisional Bench decided the appeal and the cross-appeal in favour of the respondents and dismissed the appellant's suit.

Now came the united State of Gwalior, Indore and Malwa (Madhya-Bharat) High Court of Judicature Act, VIII of 1949, hereafter referred to as the Act. It was enacted by the Interim Legislative Assembly of the United State which had earlier come into existence. The Act come into force on January 18, 1949. Section 40 of this Act repealed ordinance No. 2 of 1948. The question that arises in this appeal depends on the construction of some of the provisions of this Act which are

now set out.

Preamble : Whereas it is necessary to provide for the continuance of the High Court of Judicature for the United State of Gwalior, Indore and Malwa (Madhya-Bharat) established under ordinance No. II of 1948, it is hereby enacted as follows :

Section 4. In this Act unless there is anything repugnant in the subject or context :-

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> (d) "High Court" means the High Court functioning as the High Court of the United State.

Section 2(a). It shall extend to the whole of the United State of Gwalior Indore and Malwa (Madhya Bharat) and shall apply to all persons within the said United State over whom the Courts having jurisdiction in the Covenanting States forming part of the said United State had jurisdiction.

> (b) This Act shall apply to all Criminal and Civil Proceedings including those under testamentary, intestate, matrimonial, divorce and insolvency jurisdiction, pending in the Courts in any State on the date on which the State is included in the United State and to such proceedings, arising in the said States, after those dates.

Section 25. Special appeal shall lie to the Full Bench of the High Court from :-

> (1) a decree or an appealable order passed by the Divisional Bench of two Judges of the High Court in the exercise of extraordinary or appellate civil jurisdiction.
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On March 31, 1949, the appellant filed an appeal to the Full Bench of the High Court from the judgment of the Divisional Bench dismissing his suit. He claimed to be entitled to file this appeal under section 25 of the Act. The Full Bench dismissed the appeal on the ground that section 25 was not available to the appellant and in this view of the matter it did not go into the merits of the appellant's case. It appears that another Full Bench of the High Court consisting of three Judges had held on an earlier occasion that section 25 did not apply where the Divisional Bench had delivered its judgment before the Act had come into force and no appeal lay from such a judgment under this section. That view was endorsed by the judgment of the later Full Bench which however was larger consisting of five judges. In the present appeal to this Court, the correctness of the last Full Bench judgment is being challenged.

The appellant contends that section 2(b) of the Act applied the Act including section 25 to the proceedings mentioned in it and section 25 so applied gave a right of appeal to the Full Bench of the High Court from the decision of a Divisional Bench of that Court passed in these proceedings. He then says that the judgment of the Divisional Bench dated December 2, 1948 from which he had appealed to the Full Bench had been passed in such a proceeding and therefore his appeal was competent. The High Court does not appear to have held that that proceeding was not of any of the kinds mentioned in section 2(b) and it seems to us that it was of one of these kinds. Section 2(b) mentions two kinds of proceedings, namely, first those pending in the Courts in any State on the date on which that State was included in the United State and secondly those which arose in the States after those dates. Now the proceeding in which the Divisional Bench pronounced judgment

was an appeal from a decision of a Single judge of the Indore High Court given on June 11, 1948, that is, before that State became included in the United State. The appeal had however been filed on August 24, 1948, that is, after Indore had been included in the United State. The appellant contends that the fact that the decree from which he had appealed had been passed before the date of inclusion of Indore in the United State while his appeal had been filed after that date made no difference for an appeal being only a continuation of the proceedings in a suit, the proceedings must be deemed to have been pending all along since the filing of the suit and therefore on the date when Indore was included in the United State though the appeal was filed later. Dinonath Ghose v. Shama Bibi ([1900] I.L.R. 28 Cal. 23) to which we were referred would seem to support the appellant's contention. In any case it seems beyond doubt that the appeal in which the judgment of the Divisional Bench, dated December 2, 1948, was pronounced, was a proceeding of the second kind mentioned in section 2(b), namely, "proceedings, arising in the said States, after those dates", i.e., the date of the inclusion of the State in the United State. It seems clear to us that the words "arising in the said States" do not refer to proceeding arising in a Princely State for the Princely State had ceased to exist after its inclusion in the United State and no proceeding could arise therein after such inclusion. So to understand these would result in this part of section 2(b) being rendered nugatory. We do not think however such a result is inevitable. These words can well be taken to refer to a proceeding arising in the areas of an erstwhile Princely State subsequently included in the United State. We think that to be the proper meaning to be given to these words. So understood the appeal in which the judgment of the Divisional Bench, dated December 2, 1948, was given was a proceeding arising in the areas of the erstwhile Indore State after the inclusion of that State in the United State for it was filed after such inclusion. It is therefore clearly a proceeding of the second kind mentioned in section 2(b).

The learned Judges of the High Court however did not, as earlier stated, accept the appellant's contention that section 25 gave a right of appeal to the Full Bench from the Judgment of the Divisional Bench passed in a proceeding mentioned in section 2(b). Their reasons for this view would appear broadly to be these : To accede to the appellant's contention a retrospective operation would have to be given to the Act and thereby affect the right vested in the respondents at the date of the passing of the Act to the finality of the judgment of the Divisional Bench delivered before that date; the rules of construction of a statute required that only such retrospective operation should be given to it as its language compelled; there was no such language used in section 2(b), which, properly understood, only gave the High Court of the United State jurisdiction over proceedings pending in the High Court of a princely State on the date on which that State was included in the United State; in any event the language of section 2(b) would be fully satisfied by giving retrospective operation to section 25 only to the extent of applying it to proceedings pending on the date of inclusion of a State in the United State and not closed by a final judgment passed before the Act came into force.

It may be conceded that the judgment of the Divisional Bench was final under the law as it stood at the date it was passed and appeal lay from it before the Act came into force. The respondents had therefore at the date of the Act a vested right to the finality of this judgment. It is also clear that a right to the finality of a judgment is a substantive right and that the acceptance of the appellant's contention would result in depriving the respondents of such a right.

The only question in this appeal is whether section 25 gives a right of appeal from the judgment of the Divisional Bench. The rule is clear that "provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" : Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner, Delhi

([1927] L.R. 54 I.A. 421, 425). Before proceeding further we wish to observe that the rule that a statute is not to have retrospective operation is only applicable where it is doubtful from the language used whether or not, it was intended to have such operation. Where the language of a statute plainly gives it as retrospective operation, the rule has no application, for, "Of course, it is obviously competent for the legislature, if it pleases, in its wisdom to make the provisions of an Act of Parliament retrospective" : Smith v. Callander ([1901] A.C. 297, 305). We may usefully read here what Bowen L.J. said in Reid v. Reid (L.R. (1886) 31 Ch.D. 402, 408) :

Now the particular rule of construction which has been referred to, but which is valuable only when the words of an Act of Parliament are not plain, is embodied in the well-known trite maxim ominis nova constitution futuris forman imponere debet non praeteritis, that is, that except in special cases the new law ought to be construed so as to interfere as little as possible with vested rights. We wish to emphasise that it is not as if all efforts should be made so as not to give a statute a retrospective operation whatever its language is. The rule does not require of the courts an "obdurate persistence" in refusing to give a statute retrospective operation.

Now, what is the language of the Act before us ? Section 25 does not contain any words to show that it was intended to have retrospective operation. It only provides for the future. It gives a new right of appeal and such appeal can of course only be filed after the Act has come into force. But there is section 2(b). That section says that the Act shall apply to all civil and criminal proceedings pending in the Courts in any State on the date on which the State is included in the United State, and to such proceedings arising in the said States after these dates. Section 2(b) therefore makes section 25, and also all other sections of the Act, applicable to the proceedings mentioned in it. Now what is the effect of this ? What is the result if a section giving right of appeal is made applicable to a proceeding ? It can only be that an appeal would lie under that section from a judgment passed in that proceeding. It is, in our view, clear that the language of section 2(b) applies section 25 to a proceeding which was pending on a date before the Act came into force, and therefore gives a right of appeal from a judgment of a Divisional Bench passed in that proceeding, whenever it may have been passed, that is to say, irrespective of whether it was passed before the Act or after it. We have here plain language which gives the statute retrospective operation. It does not seem to us that there is any scope here of applying the rule of presumption against the retrospective operation of a statute.

But it is said that section 2(b) only extends the jurisdiction of the High Court to the pending cases over which it would not otherwise have any jurisdiction, and is not intended to give retrospective operation to any part of the Act. It is said that this is the real effect of section 2(b) is clear because it is put along with section 2(a) which only specifies the territories and the persons over whom the High Court having authority under the Act is to have jurisdiction. It seems to us, however, that whether a section only creates jurisdiction or not will depend on its language and not on its proximity to another section of the same statute defining jurisdiction. Then it is said that the Act repealed and substantially re-enacted Ordinance No. 2 of 1948 and as the corresponding section of that Ordinance, namely, section 4(b), which was practically in the same language as section 2(b) of the Act, was only concerned with jurisdiction, section 2(b) must be understood to do the same. This contention was accepted by the learned Judges of the High Court but in this they were clearly in error. We do not wish to be understood as saying that in no case is a reference to the old law permissible for interpreting a new statute, but it seems to us that in the present case such a reference was not justified. One of the cases on which the learned Judges of the High Court based themselves is Tumahole Bereng v. The King ([1949] A.C. 253). There the Judicial Committee were dealing with a statute only a part of which had been amended and after reminding themselves of the wisdom of the warning given by Lord Watson in Bradlaugh v. Clarke ([1883] 8 App. Cas. 354) that it is "an

extremely hazardous proceeding to refer to provisions which have been absolutely repealed, in order to ascertain what the legislature meant to enact in their room and stead", observed at p. 267 :

> ".... the circumstances of the present case put it beyond the mischief Lord Watson was minded to discourage, and that for two reasons. In the first place, the terms of the section as it now stands are sufficiently difficult and ambiguous to justify the consideration of its evolution in the statute-book as a proper and logical course; and secondly, the object of the instant enquiry is to ascertain the true meaning of that part of the section which remains as it was, and which there is no ground for thinking the substitution of a new proviso was intended to alter."

In the case before us the language admits of no difficulty - it is simple and it applies all the sections of the Act to certain proceedings and as one of these sections at least, namely, section 25, is new, clearly a change in the law was intended. We do not wish to suggest that the circumstances which would justify a reference to the old law have been exhaustively set out by the Judicial Committee. It is enough for us to say that none of those circumstances exists here. In Abdur Rahim v. Mahomed Barkat Ali ([1927] L.R. 55 I.A. 96), which was also referred to by the High Court, the Judicial Committee had to decide whether a suit was within section 92 of the Code of Civil Procedure, 1908, and for that purpose to find out what reliefs the expression "further and other relief" in the section would include. These words are plainly wide and require definition. The Judicial Committee referred to the earlier law on the subject to find out what that general expression was intended to include. This case does not justify a resort to the old law by us, for here we have no general words as to the meaning of which difficulty has arisen. The last case on which the High Court based itself for this part of its judgment to which we wish to refer was In re Mayfair Property Co. ([1898] 2 Ch. 28). There the contention was that a certain interpretation would defeat the object of the Act and in order to ascertain that object a reference to the old law was fond necessary. No such question arises in the case before us. It is not contended that the object of the Act before us would be defeated if section 2(b) applied section 25 retrospectively. For these reasons it seems to us that the present is not a case where it is permissible to interpret section 2(b) of the Act by reference to section 4(b) of the Ordinance. Further in our view, in any event, section 4(b) of the Ordinance provides no assistance in interpreting section 2(b) of the Act. Section 4(b) of the Ordinance was not concerned with applying to any case another provision in it giving a right of appeal which section 2(b) of the Act clearly is. What we have to decide is, in what cases that right of appeal was given and for that purpose plainly section 4(b) of the Ordinance can afford no assistance as it was not concerned with any such right of appeal.

It is then said that sufficient meaning would be given to the words "pending in the Courts in any State on the date on which the State is included in the United State" in section 2(b), if they are understood as referring to the cases which were pending on that day and which had not been finally decided and determined before the Act had come into force. This contention is sought to be justified on the principle "that you ought not to give a larger retrospective power to a section, even in an Act which is to some extent intended to be retrospective, than you can plainly see the Legislature meant". See Reid v. Reid (L.R. (1886) 31 Ch.D. 402, 408). Now it seems to us that the principle has no application here. There is nothing in the section to indicate that the legislature intended the retrospective operation of section 25 to be confined to those pending cases which had not terminated before the Act had come into force. Such a construction would require adding to the section the words "and not finally decided before the Act comes into force". The rule of presumption against the retrospective operation does not require the addition of any words to a section otherwise plain. We recall here, what we have said earlier, that the rule applies only where the words are not plain or

are capable of two meanings. It does not justify subtlety in adding words to the section to make the rule applicable.

It is also said that though section 2(b) applies section 25 to the proceedings mentioned therein, it does not expressly say that in so applying it, vested rights shall also be affected. We think it enough to dispose of this contention to say that, the necessary result of applying section 25 to the proceedings mentioned is to disturb vested rights and that in order that a statute may have a retrospective operation it is not necessary to find words in it expressly stating that it will have such operation notwithstanding that that will disturb vested rights. We do not think that the words are not plain to give a retrospective operation.

We therefore think that the appellant's appeal from the Divisional Bench was competent under section 25 of the Act. The result is that this appeal is allowed. The decree of the Full Bench of the High Court is set aside. The case will now go back to the High Court of (Madhya-Pradesh) to be decided on the merits. The appellant will have the costs here and below.

We have here to state that there were three other connected matters. First, there was an application by the appellant to this Court for special leave to appeal from the Judgment of the Divisional Bench, being Petition for Special Leave to Appeal (Civil) No. 368 of 1957. Then there was another application by the appellant to this Court for special leave to appeal from the judgment of the Full Bench, being Petition for Special Leave to Appeal (Civil) No. 242 of 1957. These had been made by way of abundant caution. Lastly, there was an application for leave to file additional documents in the appeal that has just been disposed of. It was Civil Misc. Petition No. 472 of 1956. None of these applications were pressed and we therefore dismiss them but without any order for costs.

Appeal allowed, case remitted.

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