

Keshavlal Jethalal Shah

Vs

Mohanlal Bhagwandas & Another

Civil Appeal No. 1271 of 1967

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidalingam, K. S. Hegde, J. C. Shah, S. M. Sikri, G. K. Mitter JJ)

02.04.1968

JUDGMENT

SHAH J.-

The respondents sued the appellant for a decree in ejectment in respect of shop Municipal Census No. 1754 at Ahmedabad and for rent in arrears and additional taxes. The trial court dismissed the claim for ejectment and passed a decree for arrears of rent and permitted increases. In appeal under s. 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947, the decree was confirmed on February 25, 1963. By s. 29(2) of that Act, as it then stood, no appeal lay against any decision in appeal under sub-s. (1) from the order of the Court of First Instance. The respondent accordingly moved the High Court Gujarat by a petition under s. 115 of the Code of Civil Procedure. When this petition was pending in the High Court Bombay Act 57 of 1947 was amended by Gujarat Act 18 of 1965, and sub-s. (2) of s. 29 was replaced by the following sub-section :

"No further appeal shall lie against any decision in appeal under sub-sec. (1), but the High Court may for the purpose of satisfying itself that any such decision in appeal was according to law call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit."

On the assumption that by the amended Act the High Court was empowered to decide all petitions pending on the date on which the amended section came into operation, as if the amended section applied thereto, the High Court entered upon a detailed investigation of the questions raised by the respondent in the petition - (1) whether the tenant proved that he was ready and willing to pay the standard rent and permitted increases within the meaning of s. 12(1) of the Act; (2) whether the tenant was in arrears of standard rent and permitted increases and the amount of tax for more than six months, and therefore the case fell within the purview of s. 12(3)(a) and not under s. 12(3)(b) of the Act; and (3) whether in any event the tenant having failed to observe the conditions of the tenancy was disentitled to the protection either, under s. 12(1) or s. 12(3)(b) of the Act, and reversed the order of the appellate court and decreed the respondent's suit. With special leave, the appellant has appealed to this Court.

This Court in *Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai* [[1964] 5 S.C.R. 157] held that in a petition under s. 115 of the Code of Civil Procedure from an order made by the appellate court under s. 29 of Bombay Act 57 of 1947, the High Court had no power to set aside the order merely because if was of opinion that the judgment was assailable on the ground of error of fact or even of law : the High Court may exercise its power under that section only if the appellate

court had acted without jurisdiction or had failed to exercise its jurisdiction or had acted with material illegality or irregularity in the exercise of its jurisdiction. Thereafter the Gujarat Legislature amended s. 29(2) by Act 18 of 1965 in the manner set out, so as to confer upon the High Court a jurisdiction wider than the jurisdiction exercisable under s. 115 of the Code of Civil Procedure.

Counsel for the appellant contended that in entering upon an enquiry into the questions raised by the respondent, the High Court exercised jurisdiction which it did not possess. Counsel contended that the right to appeal - and which expression includes the right to move a superior court in exercise of the revisional jurisdiction - attaches to a litigation when it commences and it is not affected by any subsequent amendment unless an express provision is made giving retrospective operation to the amendment and that the right to appeal which originally attached to the litigation will continue to govern it till it is finally decided. Counsel relied in support of that contention upon the decisions in *Colonial Sugar Refining Company Ltd. v. Irving* [[1905] A.C. 369]; *Garikapatti Veeraya v. N. Subbiah Choudhury* [[1957] S.C.R. 488]; and *Nana Bin Aba v. Sheku Bin Andu* [I.L.R. 32 Bom. 337].

In the alternative counsel contended that the order of the appellate court which had acquired finality, subject to the exercise of the limited jurisdiction by the High Court under s. 115 of the Code of Civil Procedure could not, in the absence of a provision in the Amending Act making the amendment expressly or by necessary implication retrospective, be set aside in exercise of the jurisdiction conferred upon the High Court by s. 29(2) of the Amending Act enacted after the date on which the judgment of the appellate court was delivered. We do not think it necessary to express any opinion on the first question, because, in our judgment, on the second point raised by counsel, the appeal must succeed.

The suit out of which this appeal arises was filed by the respondent on July 22, 1958; it was decided on October 28, 1961; the appellate court decided the appeal on February 25, 1963 and the Amending Act 18 of 1965 came into effect on June 17, 1965. The High Court exercised the jurisdiction invested by Act 18 of 1965 in respect of a judgment which had become final a long time before that Act. It is true that this Court in *Indira Sohanlal v. Custodian of Evacuee Property, Delhi and Others* [[1955] 2 S.C.R. 1117] distinguished the judgment of the Judicial Committee in the *Colonial Sugar Refining Co. Ltd.'s case* [1905] A.C. 369] and observed at p. 1133 :

"..... it appears to be clear that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action - though we do not so decide - no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. By the very terms of section 5-B of East Punjab Act XIV of 1947, finality attaches to it on the making of the order. Even if there be, in law, any such right at all as the right to a determination with the attribute of finality, it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made, when alone the right to finality becomes an existing right as in....."

In *Indira Sohanlal's case* [[1955] 2 S.C.R. 1117], the Court was dealing with a case in which by amendment of statute, the finality which would but for the amendment have attached was taken away before the order was made. This Court in *Dafedar Niranjan Singh and Another v. Custodian Evacuee Property (Punjab) and Another* [[1962] 1 S.C.R. 214] distinguished *Indira Sohanlal's case* [[1955] 2 S.C.R. 1117] and held that an order which had become final under a provision of the law

could not be affected retrospectively under an Amending Act so as to deprive the order of its finality acquired under the original provision. In Dafedar Niranjn Singh's case [[1962] 1 S.C.R. 214] an order releasing the property in dispute was passed by the Custodian of Evacuee Property under Patiala Ordinance No. IX of 2004 Samvat. No appeal was filed against the order of the Custodian and it became final on that account. The order was however set aside by the Custodian in exercise of jurisdiction under s. 58(3) of the Administration of Evacuee Property Act 31 of 1950. This Court held that since the order had become final in exercise of the jurisdiction subsequently conferred, in the absence of any positive indication giving s. 58(3) retrospective operation, the finality of the previous order could not be taken away.

Counsel for the respondent relied upon judgment of this Court in Moti Ram v. Suraj Bhan and Others [[1960] 2 S.C.R. 896] in which following Indira Sohanlal's case [[1955] 2 S.C.R. 1117] it was held that the High Court could in exercise of jurisdiction under an Amending Act enacted after the litigation was commenced, set aside an order which, according to the law in force at the date when the litigation was commenced, was not subject to the jurisdiction of the High Court. In Moti Ram's case [[1960] 2 S.C.R. 896] an application for eviction of the appellant from a shop was made in August 1956 under s. 13 of the East Punjab Urban Rent Restriction Act, 1949. An appeal was provided under s. 15 of the Act from the order of the Rent Controller, and sub-s. (4) of s. 15 provided that the decision of the appellate authority, and subject only to such decision, the order of the Controller shall be final. By Amending Act 29 of 1956 which came into force on September 24, 1956, the High Court was empowered to call for and examine the records relating to any order passed under the act for satisfying itself as to the legality or propriety of such order. The landlord's application was dismissed by the Rent Controller and in appeal the appellate authority confirmed the order. Thereafter on the application of the landlord the High Court reversed the order. This Court rejected the contention that the High Court had no jurisdiction to entertain the revision application under s. 15(3) as amended. The decision brought before the High Court in exercise of its revisional jurisdiction under s. 15(5) of the amended Act was delivered on August 19, 1958, after amendment of the Act on September 24, 1956. On the date on which it was made, the order had acquired no finality, for it was subject to an order which may be passed in a revision application which may be filed before the High Court under the amended Act. Moti Ram's case [[1960] 2 S.C.R. 896] has, therefore, no application to this case.

Counsel for the respondent urged that the extension of the jurisdiction of the High Court by s. 29(2) of Bombay Act 57 of 1947 as amended by Gujarat Act 18 of 1965 related not to any right in existence, but to a matter of procedure, and on that account the Act as amended applied at the hearing, and in deciding the revision application filed by the respondent the High Court was bound to apply the amended Act. But when the revision application was entertained under s. 115 of the Code of Civil Procedure, the High Court assumed to itself a limited jurisdiction conferred by that section, and in the absence of any express provision made in the Amending Act, the jurisdiction conferred by that section could not be extended. The question whether the High Court could in exercise of its jurisdiction set aside, modify or alter the decision of the appellate court was not a matter of procedure. The order of the appellate court, subject to scrutiny by the High Court within the limited field permitted by s. 115 of the Code of Civil Procedure, was final. In conferring upon the High Court a wider jurisdiction for the purpose of determining whether the decision of the appellate court was according to law, the Legislature did not attempt to legislate in the matter of procedure. The Legislature expressly sought to confer upon the High Court power to reopen questions which till then were to be deemed finally decided.

Counsel for the respondent also submitted that s. 29(2) as amended was intended to have

retrospective operation, because the Amending Act was in the nature of explanatory legislation. There is nothing in the language of s. 29(2) as amended, which may indicate that it was intended to be retrospective in operation. Section 29(2) as amended in terms confers jurisdiction upon the High Court to call for the record of a case for the purpose of satisfying itself that the decision in appeal was according to law, which the High Court did not possess before the date of the Amending Act. The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from s. 115 Code of Civil Procedure, and the Legislature has by the Amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2), before it was enacted, was precise in its implication as well as in its expression : the meaning of the words used was not in doubt, and there was no omission in its phraseology which was required to be supplied by the amendment.

The appeal is therefore allowed and the order passed by the High Court is set aside, and the proceeding is remanded to the High Court to deal with and dispose of the revision application on the footing that it is governed by s. 115 of the Code of Civil Procedure under which it purports to have been filed. The costs of this Court will be costs in the High Court.

Petition allowed.##

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