Mamleshwar Prasad and Another

Vs

Kanhaiya Lal (Dead) Through L. Rs.

Civil Appeals Nos. 2167 To 2169 of 1968

(CJI A. N. Ray, K. K. Mathew, V. R. Krishna Iyer JJ )

04.03.1975

JUDGMENT

KRISHNA IYER, J. –

1. A common judgment of the Division Bench of the Delhi High Court disposed of four appeals, the points covered by all being admittedly identical. Special leave was granted by this Court and thus four appeals came into existence here. However, the appellants before us moved this Court that with a view to save money and energy, one of the four may be directed to be got ready and disposed of and the others may, thereafter, follow the fate of the first. On this basis C.A. No. 2556 of 1966 was heard all length decided adversely to the present appellants. Shri Bindra, learned Counsel for the appellants, submits that the earlier adjudication by this Court amounted to a judgment per incuriam and did not bind him or the Court. He was thus free to argue on the merits, especially the holding on the civil court's jurisdiction, and the matter was at large. We have to consider this contention on its merits.

2. Certain background facts bearing on the narrow question above posed serve to appreciated the point made. The present batch of appeals, as already stated, emanated from a judgment covering them all rendered by the Delhi High Court which itself arose out of a like common judgment of a Single Judge of the High Court so on down the pyramid to the base viz., the decree of the trial Court. The present appellant had lost the battle all along the line. For brevity's sake, we may content ourselves with the statement that the courts had been invited to pronounce upon the jurisdiction of the civil court to adjudicate upon the controversy which related to the Delhi Land Reforms Act with special reference to relevant provisions barring suits. In short the point about the civil court's power to go into a land reform litigation had been considered and adversely decided, so much so it is not correct for the appellants to say that the matter had, by grave inadvertence, been missed. We are not examining the soundness of the actual decision on the merits since indeed we feel that the appeals must fail in limine and no principle of judgment per incuriam can salvage the case.

3. At an early stage, an application was made before this Court embracing all the appeals, including the present three, which runs thus :

In the matter of Civil Appeal No. 2556 of 1966

and

In the matter of Appeals arising from the orders dated 14-8-1968 of the Delhi Court in S.C.A. No. 186-D/66, 189-D of 1966 and 190-D/66

and

In the matter of Mamleshwar Pershad and another.

The petitioners (appellants) accordingly pray that this Hon'ble Court may be pleased to pass orders

> (1) Consolidating the 4 appeals above-mentioned.
>
> (2) Modifying the orders dated 8-12-1966 in S.L.P. 1366 of 1966 so that the security for the respondents' costs deposited in the said appeal may be considered also as security for the costs of the respondents in the 3 appeals arising from the S.C. As. Nos. 186-D, 189-D and 190-D of 1966.
>
> (3) That in the case appellants are required to furnish security apart from the amount deposited in Civil Appeal No. 2556 of 1966, time may be suitably extended for such deposit and delay in depositing within the time allowed by the Rules may be condoned.
>
> (4) Modifying the directions regarding the preparation of record so that the proceedings in the High Courts to be printed in the appeal No. 2556 of 1966 be read as record in the three other appeals afore-mentioned and that the record for the said three other appeals may be printed only so as to include the proceedings in the trial Court and the First Appellate Court; and
>
> (5) Such further or other directions may be made as this Hon'ble Court may deem fit in the circumstances of the case.

4. What needs to be underscored is the appellant's own prayer that the four appeals be consolidated. The reason given is tell-tale :

> That only one judgment of the High Court in the Letters Patent Appeals is impugned before your Lordships in all the 4 appeals above-mentioned. It is therefore in the interest of justice that the 4 appeals viz., the Civil Appeal No. 2556 of 1966 and the other 3 appeals arising from SCAs Nos. 186-D, 189-D and 190-D of 1966 deserve to be consolidated and would be disposed of by one argument (sic) common to all of them. That there is nothing to be decided by this Hon'ble Court in any of the Appeals which is not common to any of the rest of them.

This prayer was granted and thus the appellants got the benefits like reduced security deposit and consolidation for purposes of printing and hearing of the appeals, on their representation to the Court that the points arising in all the appeals were common and the disposal of one would govern the rest.

5. A litigant cannot play fast and loose with the Court. His word to the Court is as good as his bond and we must, without more ado, negative the present shift in stand by an astute discovery of a plea that the earlier judgment was rendered per incuriam.

6. The wisdom which has fallen from Bowen, L.J. in Ex Parte Pratt (52 QB 334, 341), though delivered in a different context, has wider relevance to include the present position. The learned Lord Justice observed :

> There is a good old-fashioned rule that no one has a right to conduct himself before a tribunal as if he accepted its jurisdiction, and then afterwards, when he finds that it has decided against him, to turn round and say, "You have no jurisdiction".

7. Certainty of the law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or obligatory running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.

8. Finally it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same points in a later case. Here we have a decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind.

9. Shri Bindra, learned Counsel has cited a few decisions before us to substantiate his submission that judgment per incuriam bind none except the particular parties to the lis. In this context, he has drawn our attention to the observations in Young v. Bristol Aeroplane Co. Ltd. ((1944) 1 KB 718, 729) which has been approved by the House of Lords in Young v. Bristol Aeroplane Co. Ltd. (1946 AC 163, 169). Similar statements are found in brief terms in the rulings reported Nicholas v. Penny ((1950) 2 KB 466) and The Bengal Immunity Company Ltd. case (The Bengal Immunity Co. v. State of Bhiar, ((1955) 2 SCR 603 : AIR 1955 SC 661 : (1955) 6 STC 446). We need not debate, in the present case, this fresh ground to undermine otherwise conclusive judgments for other paramount rules governing justice administration prevail, as earlier indicated. But it is extremely significant that this facile theory was forwarded upon by the House of Lords in Cassel & Co. Ltd. v. Broome ((1972) 1 All ER 801 : (1972) 2 WLR 645). In that case the Highest Court, viz. the House of Lords.

rejected in condemnatory terms the Court of Appeal's decision to the effect that the decision of the House of Lords in Rookes v. Barnard (1964 AC 1129) on the issue of exemplary damages had been reached per incuriam because of two previous decisions of the House. Lord Hailsham, L.C., in the course of the leading speech for the majority asserted that "it is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way."

While Lord Reid took the view that it was 'obvious that the Court of Appeal failed to understand Lord Devlin's speech'. The per incuriam principle is of limited application. Very few decisions have subsequently been regarded as having been reached per incuriam and in Morelle v. Wakeling ((1955) 2 QB 379) a Master of the Rolls stated that such instances should be 'of the rarest occurrence', and should be limited to 'decisions given in ignorance or forgetfullness of some inconsistent statutory provision or of some authority binding on the court concerned. Thus the doctrine will not be extended to cases which were merely not fully argued or which appear to take a wrong view of the authorities or to misinterpret a statute ("The English Legal System" by R.J Walker and M. G. Walker, III Edn., Butterworthns, 1972).

10. Now to costs. A compassionate submission was made by Shri Bindra that the parties do bear their costs in this Court. We direct accordingly.

</html