

Vishnu Awatar

Vs

Shiv Autar and Others

And

Smt. Kaushalya Devi and Others

Vs

Smt. Sushila Devi and Others

And

Karan Singh

Vs

Desraj Singh and Another

Special Leave Petitions (Civil) Nos. 9945, 10550 and 18857 of 1979

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

02.05.1980

ORDER

KRISHNA IYER, J. –

1. These petitions for special leave deserve to be dismissed because the Full Bench Judgment of the Allahabad High Court which is challenged in all the three has been rightly decided in our view. Even so, a speaking order has become necessary because, as rightly pointed out by counsel, the earlier decision of this Court in Vishesh Kumar v. Shanti Prasad ((1980) 2 SCC 378) does not specifically cover the precise point that has been raised before us by counsel for the petitioner. We are concerned with the ambit and impact of Section 3 of the Code of the Civil Procedure (Uttar Pradesh Amendment) Act, 1978 (U.P. Act 31 of 1978) (for short, the Act), which forbids a revision under Section 115 of the Civil Procedure Code (acronymically, the CPC) to the High Court from a judgment or order in appeal by the District Court where the suit out of which the case arises is not one of the value of Rs. 20,000 and above.

2. We have, in Vishesh Kumar v. Shanti Prasad ((1980) 2 SCC 378) considered the scheme, setting and purpose of the U.P. Amendment to the Civil Procedure code bearing on the revisory power of the High Court under Section 115 CPC. We may quote : (SCC pp. 380 & 381, paras 3 & 4)

A schematic analysis of the judicial hierarchy within a State indicates that the High Court, as the apex court in the hierarchy, has been entrusted, not only with the supreme appellate power exercised within the State but also, by virtue of Section 115, the power to remove, in order to prevent a

miscarriage of justice, any jurisdictional error committed by a subordinate court in those cases where the error cannot be corrected by resort to its appellate jurisdiction. The two salient features of revisional jurisdiction under Section 115 are, on the one hand, the closely limited grounds on which the court is permitted to interfere and on the other, the wide expanse of discretion available to the court, when it decides to interfere, in making an appropriate order. The intent is that so serious an error as one of jurisdiction, if committed by a subordinate court, should not remain uncorrected, and should be removed and record healed of the infirmity by an order shaped to removed and record healed of the infirmity by an order shaped to reinstate the proceeding within the proper jurisdictional confines of the subordinate court.

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From its inception there was increasing resort to the revisional jurisdiction of the High Court under Section 115. Over the years the volume of litigation reached an insupportable point in the pending docket of the court. To alleviate the burden, a pattern of decentralisation of revisional power was adopted and Section 115 was amended by successive State amendments, each attempting to close the gap left by its predecessors.

Many times, amendments were made by the U.P. Legislature to effectuate its determined purpose of dichotomising and decentralising the revisional jurisdiction, a goal which is laudable and which other States may well regard as a paradigm.

3. The crucial provision, Section 3 of the Act, reads thus :

3. Substitution of Section 115. - For Section 115 of the said Code, the following section shall be substituted, namely :-

115. Revision. - The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before August 1, 1978 and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any court subordinate to such High Court or District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity;

the High Court or the District Court, as the case may be, may make such order in the case as it thinks fit :

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section :

Provided further that the High Court or the District Court shall not under this section,

vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceedings, except where, -

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Explanation. - In this section, the expression 'any case which has been decided' includes any order deciding an issue in the course of a suit or other proceeding.

4. The bulk of the cases we disposed of in the earlier round turned on the tenability of a revision upon a revision - a product of legal ingenuity by which the attempt of the legislature to save the little litigant from the logistics of justice from the distant High Court by confining lesser revisions to the District Court was metamorphosed into a dual revision, one at the District Court level and the other at the High Court against the District Court's order in revision. Value-free legalistics can be counter-productive acrobatics ! When that happened the legislature stepped in again and again and we are concerned with the import and impact of Section 3 of the Act vis-a-vis appellate orders of District Courts where the suits from which they stem are less than Rs. 20,000 in value. A brief analysis of that provision is contained in Vishesh Kumar ((1980) 2 SCC 378) : (SCC p. 382-383, para 4)

4. FROM 1ST AUGUST, 1978 :

Finally, Section 3, Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978, which was deemed to have come into force on August 1, 1978, amended Section 115 again and restored the bifurcation of revisional jurisdiction between the High Court and the District Court.

Accordingly now :

(i) The High Court alone had jurisdiction under Section 115 in cases arising out of original suits or other proceedings of the value of Rs. 20,000 and above, including such suits or other proceedings instituted before August 1, 1978;

(ii) The District Court alone has jurisdiction under Section 115 in any other case, including a case arising out of an original suit or other proceedings instituted before August 1, 1978;

(iii) The High Court has jurisdiction under Section 115 in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court;

(iv) A revision proceeding pending immediately before August 1, 1978 of the nature in which a District Court could exercise revisional power under Section 115 as amended by the Amendment Act, 1978 if pending;

(a) in the District Court, would be decided by that court as if the Amendment Act of 1978 were in force at all material times;

(b) in the High Court, would be decided by that court as if the Amendment Act of 1978 had not come into force.

5. The provision now before us is slightly different although the purpose and the result are the same. The scheme is clear. The High Court has revisory power only in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above including such suits or other proceedings instituted before August 1, 1978. The entire residuary area belongs to the District Court. Another test of revisional jurisdiction for the High Court is to see whether the first proviso applies :

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section.

6. The High Court, in the last Full Bench decision traced the story of the race between the legislature and judicial interpretation and summed up the result rightly thus : (Jupiter Chit Fund (Pvt.) Ltd. v. Dwarka Diesh, AIR 1979 All 218, 225 (FB) : 1979 All LJ 685 : 1979 All WC 371)

The High Court was confined to cases arising out of original suits or other proceedings of the value of Rupees 20,000 or above, including such suit or other proceedings instituted before August 1, 1978. The jurisdiction of the District Court was in respect of any other case including a case arising out of an appeal suit or other proceeding instituted before such date. The legislature has continued to use the phrase "cases arising out of original suits". The interpretation placed upon this phrase by the Full Bench in Har Prasad Singh case (Har Prasad Singh v. Ram Swarup, AIR 1973 All 390 (FB) : 1973 All WR 241) will apply. The revisional jurisdiction would hence not extend to cases arising out of the disposal of appeals or revisions by the District Court. The proviso is also in the same terms as the proviso added in 1973 namely, it uses the phrase "cases arising out of original suits or other proceedings". As already seen, it will not cover cases arising out of disposal of appeals or revisions.

The words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added in order to bring within the purview of the revisional jurisdiction orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings" have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions.

The phrase "in any other case" used with reference to the District Court will refer to cases arising out of original suits of the value of less than Rs. 20,000 and also cases arising out of other proceedings of an original nature of a valuation below Rs. 20,000.

7. Ordinarily, when a State legislation is being interpreted the meaning received by it in the High Court as the settled intent should rarely be disturbed by this Court unless the error is so egregious, the impact goes beyond the State or like legislation elsewhere and decisions of the High Courts thereon may lead to confusion and uncertainty. Here on such consideration arises and the reasoning of the High Court strikes us as sound.

8. The residuary power is with the District Court. The High Court has no revisional power under

Section 115 unless the case arises out of an original suit or other proceeding i.e. other original proceeding decided by the District Court or where the case arises from a suit of and above Rs. 20,000 in value. If the District Court has decided, not in its original jurisdiction, then the case, be it a revisional or appellate order, is not amenable to the High Court's revisional of the value of Rs. 20,000 and above, the High Court has revisory power. All other cases fall outside and become final at the District Court level.

9. After all, our District Courts are easier of access for litigants, and the High Courts, especially in large States like Uttar Pradesh, are 'untouchable' and 'unapproachable' for agrestic populations and even urban middle classes. Nor is there ground to distrust the District Judges. A hierarchy of courts built upon a heritage of disbelief in inferiors has an imperial flavour. If we suspect a Munsif and put a District Judge over him for everything he does, if we distrust a District Judge and vest the High Court with pervasive supervision, if we be skeptical about the High Courts and watch meticulously over all their orders, the system will break down as its morale will crack up. A psychic communicable disease of suspicion, skepticism and servility cannot make for the health of the judicial system. If the Supreme Court has a super-Supreme Court above it, who knows how many of its verdicts will survive, judgment by the frequency with which it differs from itself.

10. Schematically, we are satisfied that decisions of District Court rendered in appeal or revision are beyond revision by the High Court, if the suit is of less than Rs. 20,000. But an exception has been engrafted by the first proviso to Section 3 to the effect that where an original decision has been made by a District Court the High Court's appellate or revisional power will come into play. That is as it should be, for one appeal or revision is almost universal. But otherwise, the District Court's decision is immune to revisional probe by the High Court.

11. Lexically, there is no escape from Section 3 because the whole residue, except where the High Court has been expressly vested with revisory power, is beyond reach under Section 115 CPC.

12. Precedentially, the result is no different as the Full Bench of the High Court has been at pains to make out. Purposively speaking, it will be stultifying to interpret Section 3 to mean that orders in appeal by District Courts must suffer a distant journey to revisory justice from the High Court. Thus we reach the convergent conclusion of "no revision to the High Court", viewing the text of Section 3 lexically, literally, schematically, and in the setting of social justice of which saving the average litigant from the intoxication of tantalising litigation is a component.

13. The short test to refuse revisory jurisdiction to the High Court is to ascertain whether the decision sought to be challenged is in a case arising out of a suit of the valuation of Rs. 20,000 and more. If the answer is 'yes' then the High Court has revisory power, but if the suit from which the case arises and in which the decision is made is one where the valuation is less than Rs. 20,000 then the litigation cannot travel beyond the District Court except in that class of cases where the decision is taken for the first time by the District Court itself in a case arising out of an original proceeding. From this angle, none of the special leave petitions survive. Special Leave Petition 9945 of 1979 is a case where the District Judge disposed of an appeal and the revision to the High Court was directed against the appellate order. The subject matter of the suit being below Rs. 20,000 in valuation, the High Court was right in refusing to exercise any revisional power. Special Leave Petition 10550 of 1979 falls in the same category and must be dismissed. The result in Special Leave Petition 8857 of 1979 is equally fatal and for the same lethal reason.

14. Before we part with the case, we may make a general observation in the hope that it may have

value as legislature guidance. Democracy, in a vast country of diversity, demographic immensity, logistic difficulty and large-scale indigency, makes decentralisation an imperative of administration. Access to justice also implies early finality within reach of the rich and the poor. These considerations persuaded the U.P. State, one of the direst in poverty, largest in population, and most agrestic in life-style, to attempt a tepid procedural reform in the field of revision to the High Court in litigations of lesser financial stakes. Judicial reform is up to now a tinkering exercise, not an engineering project but even that little tinkering is fiercely challenged as litigative anathema by the profession which is unfortunate.

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