

Udai Bhan Gupta

Vs

Hari Shankar Bansal and Others

Civil Appeal No. 2645 of 1983

04.04.1983

ORDER

1. Respondent commenced an action in ejectment on diverse grounds available under the U.P. Rent Act against the appellant. The action ended in a decree in favour of the appellant. Appellant moved a revision application before the High Court of Judicature at Allahabad under Section 25 of the Provincial Small Cause Courts Act read with Section 115 of the Code of Civil Procedure. At the hearing of the revision petition, a preliminary objection was taken on behalf of the respondents that the revision petition was barred by limitation. Reliance was placed on the amendment to Section 25 of the Provincial Small Cause Courts Act as amended by U.P. Act No. 70 of 1966 in its application to the State of U.P. It reads as under :

The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law, may of his own motion, or on the application of an aggrieved party made within thirty days from the days of such decree or order, call for the case and pass such order with respect thereto as he thinks fit.

By the U.P. Civil Laws Amendment Act 37 of 1972, a proviso was engrafted to the Section 25 extracted hereinabove. It reads as under :

Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of a Judge of Small Causes, the power or revision under this section shall vest in the High Court.

The learned Judge held that the limitation for preferring revision petition to the High Court would be 30 days irrespective of the fact that the revision petition would lie to the High Court and not to the District Judge as set out in the main body of the section. Having reached that conclusion, the learned Judge dismissed the revision petition as barred by limitation. Hence this appeal by special leave.

2. Section 25 of the Provincial Small Cause Courts Act did not provide for a period of limitation for filing a revision petition to the High Court. Therefore, the limitation for filing a revision petition to the High Court against any order of the Small Cause Court would be governed by Section 131 of the Limitation Act of 1963 which provides a period of 90 days commencing from the date of the decree or order sought to be revised. If Article 131 were to apply, the revision petition filed by the present appellant would be in time. The High Court was of the opinion that the amendment made to Section 25 in its application to the State of U.P. provided for a revision to the District Judge which in itself provided a shorter period of limitation and that shorter period of limitation would equally govern the limitation even if the revision petition were to be filed in the High Court. What the High Court

overlooked was that no revision petition would lie to the District Judge against the decision of a Small Cause Court under Section 25. Therefore, when Section 25 was amended in its application to the State of U.P. by conferring the power of revision on the District Judge against the decision of Small Cause Court, simultaneously it became necessary to provide a period of limitation because Article 131 would not cater to such a situation. The Legislature taking note of the fact that ordinarily limitation of 30 days is prescribed for an appeal from the Court of Munsif to the District Court and that same period should be made available for a revision against the order of Court of Small Causes to the District Judge. But when a proviso was subsequently added to Section 25 to clarify the position that where the power of Court of Small Causes is conferred on a District Judge or Additional District Judge, revision petition would lie to the High Court. The Legislature was aware that the period of limitation for such a revision would be governed by Article 131 and no separate specific period of limitation need be prescribed. We are therefore, not impressed by the view taken by the High Court, but we leave the point to be considered on an appropriate occasion.

3. Assuming thought we have our grave doubts that the High Court was right in holding that a period of limitation for filing revision petition before the High Court was 30 days as provided in Section 25 which catered to the situation where the revision petition would lie to the District Judge, in such a confusing situation about the legal position it should have called upon the appellant to seek condonation of delay, if there be any. It was all the more necessary because whenever an appeal or a revision petition is filed in the Registry of the High Court, the defects have to be pointed out and if the revision petition filed by the appellant was barred by limitation, the Registry ought to have pointed out the defect which would have prompted the appellant to seek condonation of delay. No such objection appears to be taken by the Registry, and the High Court at the time of hearing of the revision petition straightway proceeded to entertain the preliminary objection and disposed of the vexed question in a manner which leaves much to be desired.

4. We therefore propose to steer a middle course. This appeal is allowed and the Judgment and Order of the High Court dismissing the revision petition of the appellant as time barred are set aside and the matter is remitted to the High Court. The appellant shall appear before the High Court before May 31, 1983 and file an appropriate application under Section 5 of the Limitation Act seeking condonation of the delay if any in making the application and the High Court would dispose of the same in accordance with law.

5. In the circumstances of the case, there will be no order as to costs.

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