

Shyamaraju Hegde

Vs

U. Venkatesha Bhat and Others

Civil Appeal No. 1324 of 1987

(Ranganath Misra, M. M. Dutt JJ)

25.09.1987

JUDGMENT

RANGANATH MISRA, J. –

1. This appeal by special leave is directed against the order made by a learned Single Judge of the Karnataka High Court in exercise of revisional jurisdiction. The High Court relied upon the ratio of its Full Bench decision in *M. M. Yaragatti v. Vasant* (ILR (1987) Kar 1286) and dismissed the revision petition as not maintainable.

2. The short question for consideration in this appeal is as to whether a revision application is maintainable under Section 115 of the Code of Civil Procedure read with Section 50(1) of the Karnataka Rent Control Act, 1961 when a District Judge has made an order in his revisional jurisdiction under Section 50(2) of the Act. This very question had come up for consideration before a Full Bench of the Karnataka High Court in the case of *Krishnaji Venkatesh Shirodkar v. Gurupad Shivram Kavalekar* (ILR (1976) Kar 1585). Venkataramiah, J., as he then was, speaking for the Full Bench held :

The second question for consideration is whether the declaration made in Section 50(2) that the order of the District Judge shall be final takes away the jurisdiction of this Court to exercise its powers of revision under Section 115 CPC. A doubt about the above question arose in view of some observations made by a Division Bench of this Court in *Diwakar Hegde v. Karkala Taluk Agriculture Produce Co-operative Marketing Society Ltd.* ((1975) 2 Kar LJ 390) to the effect that when a statute declares that the decision of an authority shall be final, it cannot be questioned either in appeal or revision under the statute. The doubt however stands resolved by the decision of the Supreme Court in *Chhagan Lal v. Municipal Corporation, Indore* ((1977) 2 SCR 871 : (1977) 2 SCC 409 : AIR 1977 SC 1555). In that case Section 149 of the Madhya Pradesh Municipal Corporation Act, 1956 which provided that the decision of the District Court in an appeal filed against an order of the Municipal Commissioner was final came up for consideration. Rejecting the contention that the said provision debarred the revisional jurisdiction of the High Court under Section 115 CPC over the order of the district court passed in appeal, the Supreme Court observed : (SCC p. 412, para 8)

The second contention is based on Section 149 of the Madhya Pradesh Municipal Corporation Act, 1956. It provides that an appeal shall lie from the decision of the Municipal Commissioner to the District Court when any dispute arises as to the liability of any land or building to assessment. Sub-section (1) of Section 149 provides that the decision of the District Court shall be final. It was submitted that the decision of the District Court was therefore final and that the High Court was in

error in entertaining a revision petition. This plea cannot be accepted for, under Section 115 of the CPC the High Court has got power to revise the order passed by courts sub-ordinate to it. It cannot be disputed that the District Court is a subordinate court and is liable to the revisional jurisdiction of the High Court.

The Full Bench also relied upon a brief decision of this Court in *Krishnadas Bhatija v. A. S. Venkatachala Shetty (dead)* by Lrs. (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)) where referring to the very provision, this Court observed :

The petitioner contends that the order of the High Court is without jurisdiction because under Section 50 of the Karnataka Rent Control Act, 1961, a revision does not lie to the High Court. We do not agree. Section 115 CPC gives powers to the High Court to revise any order from the district court, subject of course to the limitations set out therein. The narrow point then is as to whether the District Judge can be equated with a district court. The High Court, following its own earlier decisions, has held so. We agree that in the scheme of Karnataka Rent Control Act, the District Judge and the district court are interchangeable expressions and nothing turns on the mere fact that the section uses the expression 'District Judge'. Section 115 CPC therefore applies and the revisional jurisdiction is vested in the High Court.

The Full Bench thereafter stated :

In view of the above decision of the Supreme Court it has to be held that the fact that the order of the District Judge under Section 50(2) is made final, does not affect the jurisdiction of this Court under Section 115 of the CPC to revise the orders of the District Judge made under Section 50(2) in the absence of any express words in the statute taking away such jurisdiction.

3. As we have mentioned earlier the learned Single Judge has relied upon a later Full Bench decision of the High Court in the case of *M. M. Yaragatti* (ILR (1987) Kar 1286). Two questions had been referred to the Full Bench for opinion, namely :

(1) whether a revision under Section 115 of the Code of Civil Procedure lies to the High Court from a revisional order made by a District Judge under sub-section (2) of Section 50 of the Karnataka Rent Control Act, 1961, as substituted by Karnataka Act 31 of 1975 ? and

(2) whether the ruling of the Full Bench of that Court in *Krishnaji Venkatesh Shirodkar v. Gurupad Shivaram Kavelekar* (ILR (1976) Kar 1585) requires reconsideration in view of the ruling of the Supreme Court in *Vishesh Kumar v. Shanti Prasad* ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) ?

The learned Chief Justice of the High Court who spoke for the Full Bench noticed the decision in *Krishnaji* case (ILR (1976) Kar 1585) as also the view expressed by this Court while disposing of the special leave petition and stated :

If the matter had rested here, there would not have been any controversy, but after the decision of the Full Bench in *Krishnaji Venkatesh Shirodkar* case (ILR (1976) Kar 1585), two decisions of the Supreme Court have been rendered, i.e., one in *Vishesh Kumar's* case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) and

the other in *Aundal Ammal v. Sadasivan Pillai* (AIR 1987 SC 203 : (1987) 1 SCC 183). It was on the basis of the judgment of the Supreme Court in *Vishesh Kumar's* case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) that the questions posed by the Division Bench had to be referred for decision to a larger bench. After the reference, the latest judgment of the Supreme Court in *Aundal Ammal's* case (AIR 1987 SC 203 : (1987) 1 SCC 183) has also been rendered. It is in the wake of these two judgments that we are required to decide whether the law laid down in *Krishnaji Venkatesh Shirodkar's* case (ILR (1976) Kar 1585) still survives.

The Full Bench on the authority of those two decisions came to the conclusion that the decision in *Krishnaji Venkatesh Shirodkar's* case (ILR (1976) Kar 1585) did not survive and a second revision to the High Court was not maintainable.

4. A two-Judge Bench of this Court in *Vishesh Kumar's* case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) was considering whether the High Court possessed revisional jurisdiction under Section 115 the Code of Civil Procedure in respect of an order of the District Court under Section 115 disposing of a revision petition and whether the High Court possessed revisional jurisdiction under Section 115 as amended by the Uttar Pradesh Amendment Act, 1978, against an order of District Court under Section 25 of the Provincial Small Cause Courts Act. The amendment shows that the District Court had also revisional jurisdiction under Section 115 and the revisional jurisdiction under that section was shared between the High Court and the District Court by providing that the High Court has exclusive revisional jurisdiction in cases arising out of original suits or other proceedings of the value of Rs. 20,000 and above and the District Court alone had such jurisdiction in any other case. This Court after discussing this provision and some authorities of the Allahabad High Court reached the conclusion that the High Court was not vested with revisional jurisdiction under Section 115 of the Code of Civil Procedure in respect of a revisional order made by the District Court under that section.

5. This conclusion was obviously reached - and in our view very rightly - on account of the fact that the power under Section 115 of the Code had clearly indicated the revisional jurisdiction of the District Court and the High Court and vested that jurisdiction exclusively in either the District Court or the High Court depending upon the pecuniary valuation of the dispute.

6. This Court then proceeded in *Vishesh Kumar's* case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) to examine the second question. Section 25 of the Provincial Small Cause Courts Act vested revisional jurisdiction in the High Court and that provision was amended in its application to Uttar Pradesh from time to time. By amendment it vested revisional jurisdiction in the District Judge and by a later amendment provided that in relation to any case decided by a District Judge or Additional District Judge exercising jurisdiction of a Judge of Small Causes, the power of revision under Section 25 would vest in the High Court. In that case the District Judge had exercised revisional power under Section 25 and the question arose as to whether the High Court could entertain a further revision under Section 115 of the Code of Civil Procedure. This Court took the view by analysing Section 25 of the Provincial Small Cause Courts Act that it was a self-contained code and Section 25 provided the whole revisional jurisdiction and, therefore, the question of invoking the revisional jurisdiction under Section 115 of the Code of Civil Procedure did not at all arise. The answer to the second question was in the negative. The two conclusions reached in *Vishesh Kumar's* case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) on the facts thereof were certainly correct but we are concerned with a different set of facts and law. The ratio of the decision in *Vishesh Kumar's* case ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) is

not directly applicable to the present facts.

7. The other case of this Court upon which reliance has been placed by the Full Bench is that of *Aundal Ammal v. Sadasivan Pillai* (AIR 1987 SC 203 : (1987) 1 SCC 183). A two Judge Bench in that case was considering the tenability of a second revision under Section 115 of the Code of Civil Procedure by the High Court in view of the provision of Section 20 of the Kerala Buildings (Lease and Rent Control) Act (2 of 1965). That section provides :

20 (1) In cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit .....

8. With reference to that provision a Full Bench of the Kerala High Court had held that a second revision lay. This Court stated in its judgment : (SCC p. 187, para 14)

It was contended by Shri Poti, learned counsel for the appellant, that no revision lay to the High Court. He submitted that Section 18(5) read with Section 20 of the Act has completely ousted the High Court's jurisdiction to interfere in this matter under Section 115 of the Code of Civil Procedure.

9. That contention was examined by this Court. It may be relevant to briefly refer to Section 18 which provided for appeal against the order of the Rent Control Court. Sub-section (5) thereof provides :

The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 20.

10. In construing the meaning and effect of the word final, reliance was placed on the judgment of this Court in *South Asia Industries Private Ltd. v. S. B. Sarup Singh* ((1965) 2 SCR 756 : AIR 1965 SC 1442). In that case the question arose as to whether in view of the provision in Section 43 of the Delhi Rent Control Act attaching finality to the judgment in second appeal by the High Court, a Letters Patent appeal could be entertained. Several authorities were referred to and the conclusion in *National Sewing Thread Co. Ltd. v. James Chadwick & Bros. Ltd.* (1953 SCR 1028 : AIR 1953 SC 357) was approved. Relying upon that decision as also the decision in *Vishesh Kumar's case* ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892), this Court held that jurisdiction of the High Court under Section 115 of the Code of Civil Procedure was excluded.

11. On the analysis presented above, the two cases upon which the Full Bench has placed reliance are really not direct authorities on the point. We have already noticed that in *Krishnaji's case* (ILR (1976) Kar 1585) the earlier Full Bench had relied upon the decision of this Court in *Chhagan Lal's case* ((1977) 2 SCR 871 : (1977) 2 SCC 409 : AIR 1977 SC 1555). A three Judge Bench in that case broadly dealt with a similar contention as arising here. At page 875 of the Reports it is stated that : (SCC p. 412, para 8)

The second contention is based on Section 149 of the Madhya Pradesh Municipal Corporation Act, 1956. It provides that an appeal shall lie from the decision of the Municipal Commissioner to the

District Court, when any dispute arises as to the liability of any land or building to assessment. Sub-section (1) of Section 149 provides that the decision of the District Court shall be final. It was submitted that the decision of the District Court was therefore final and that the High Court was in error in entertaining a revision petition. This plea cannot be accepted for, under Section 115 of the Civil Procedure Code the High Court has got a power to revise the order passed by courts subordinate to it. It cannot be disputed that the District Court is a subordinate court and is liable to the revisional jurisdiction of the High Court.

12. It is this observation in that judgment which had been followed in Krishnaji's case (ILR (1976) Kar 1585). We may point that the judgment of the Full Bench in Krishnaji's case (ILR (1976) Kar 1585) was delivered by our learned brother Venkataramiah, J. as a member of the Full Bench then and incidentally he was one of the members of the two Judge Bench in Aundal Ammal's case (AIR 1987 SC 203 : (1987) 1 SCC 183) where a contrary view has been taken. If this Court really intended to reverse the effect of the Full Bench decision in Krishnaji's case (ILR (1976) Kar 1585) to which our learned brother was a party, one would have expected reference to Chhagan Lal ((1977) 2 SCR 871 : (1977) 2 SCC 409 : AIR 1977 SC 1555) as also Krishnaji (ILR (1976) Kar 1585).

13. As against the two authorities of this Court, namely, the cases of Vishesh Kumar ((1980) 3 SCR 32 : (1980) 2 SCC 378 : AIR 1980 SC 892) and Aundal Ammal (AIR 1987 SC 203 : (1987) 1 SCC 183) dealing with provisions of different statutes, there is a direct decision of this Court in the case of Krishnadas Bhatija (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)) which has already been quoted. This Court was dealing with the very provision after its amendment in 1975 and the very question which now falls for consideration was before this Court. In Krishnaji's case (ILR (1976) Kar 1585) the decision of this Court had been relied upon as a binding authority and it was concluded that the High Court has powers to entertain a revision under Section 115 of the Code of Civil Procedure against the revisional order of a District Court. It is conceded that the impugned provision which was being considered by this Court in Krishnadas Bhatija's case (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)) continues to be the same. Though the decision rendered in Bhatija's case (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)) by this Court is not a detained one, the conclusion on the point is clear and admits of no ambiguity. The Full Bench in the impugned judgment clearly went wrong in holding that the two Judge Bench of this Court referred to by it had brought about a total change in the position and on the basis of those two judgments Krishnaji's case (ILR (1976) Kar 1585) would be no more good law. The decision of a Full Bench consisting of three Judges rendered in Krishnaji's case (ILR (1976) Kar 1585) was binding on a Bench of equal strength unless that decision had directly been overruled by this Court or by necessary implication became unsustainable. Admittedly there is no overruling of Krishnaji's (ILR (1976) Kar 1585) decision by this Court and on the analysis indicated above it cannot also be said that by necessary implication the ratio therein supported by the direct authority of this Court stood superseded. Judicial propriety warrants that decisions of this Court must be taken as wholly binding on the High Courts. That is the necessary outcome of the tier system. We may briefly refer to the observations of the Lord Chancellor in *Cassell & Co. Ltd. v. Broome* ((1972) 1 All ER 801, 809) where the Lord Chancellor administered a warning by saying :

I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers.

This has been approved by this Court on more than one occasion. Added to the above is the provision of Article 141 of the Constitution which unequivocally states that the law declared by this Court shall be binding on all courts within the territory of India. In the facts and circumstances of the case, the High Court should not have taken onto itself, the responsibility of saying that its earlier Full Bench judgment based upon a decision of this Court in the circumstances indicated above had lost its binding authority in view of two other judgments rendered in different situations and setting. We are really not in a position to appreciate the manner in which a coordinate bench of the High Court has chosen to overrule an earlier judgment of that court.

14. On the view we have taken, it must follow that we too are bound by the decision taken by this Court in Krishnadas Bhatija's case (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)). Krishnaji's case (ILR (1976) Kar 1585) was rendered under the Karnataka Rent Control (Amendment) Act, 1975 and has held the field for over a decade. No justification has been pointed out by the High Court why that should be discarded. It is one of the essential requirements of the administration of justice that judgments rendered by superior courts and particularly with the approval of the apex court should not be frequently changed so as to unsettle settled positions. The fact that the State legislature has not thought it necessary to amend the law and set at naught Krishnaji (ILR (1976) Kar 1585) or Bhatija (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)) is indicative of the position that this Court had not taken a wrong view of the legislative intention. In these circumstances we feel advised not to enter into an analysis of the provisions of the Act for a fresh look at the matter and prefer to follow Bhatija (AIR 1987 SC 203 : (1987) 1 SCC 183). We make it clear that we have not felt it necessary to examine whether the ratio of Aundal Ammal (AIR 1987 SC 203 : (1987) 1 SCC 183) is binding or requires reconsideration in the presence of Bhatija (Special Leave Petition No. 913 of 1978, decided on February 13, 1978 (SC)) in the field as a direct authority.

15. For the reasons we have indicated above, we allow the appeal, set aside the judgment of the Karnataka High Court and declare that the earlier Full Bench decision in Krishnaji's case (ILR (1976) Kar 1585) holds the field. This appeal became necessary on account of the wrong view taken by the High Court. We do not think it is proper to saddle the respondent with costs of the appeal.

</html