

ALLAHABAD HIGH COURT

Bimla Rani Kohli

Vs.

Bandu Motor Finance Private Ltd.

Civil Revn. No. 1247 of 1969. from judgment and decree of Addl. Dist. J. Meerut
(B.D. Gupta and Hari Swarup, JJ.)

02.06.1969. 03.02.1971

JUDGMENT

Hari Swarup, J.

1. This matter has come before us as a question referred by a learned Single Judge hearing the civil revision under Section 115, Civil Procedure Code. The question referred is:-

"Is a revision against the judgment and decree of the District Judge passed under Section 25 of the Provincial Small Cause Courts Act maintainable under Section 115 of the Code of Civil Procedure ?"

2. The suit giving rise to this revision had been instituted in the court of Judge Small Causes and was decreed by him. A revision was preferred against the decree of the Judge Small Causes and the Additional District Judge partially allowed the revision and modified the decree passed by the trial court.

3. Learned counsel for the opposite party, in support of his preliminary objection, contended, firstly, that the jurisdiction of this Court to entertain the revision is barred by Section 7, Civil P. C; secondly that it is barred by Section 27 of the Provincial Small Cause Courts Act (hereinafter referred to as the Act) and thirdly, that the District Judge, while exercising powers under Section 25 of the Act, does not act as a court subordinate to the High Court within the meaning of Section 115, Civil Procedure Code We do not find force in any of these contentions.

4. Section 7, Civil Procedure Code rearranged as relevant to the present case will read:-

Section 115 shall not extend to courts constituted under the Provincial Small Cause Courts Act, 1887.

This means that the power under Section 115, Civil Procedure Code will not be available where the case has been decided by a court constituted under the Act. The revision filed is not against any case decided by a court constituted under the Act. It has been filed against the decree or order passed by the District Judge. The District Judge cannot be said to be a court constituted

under the Act. The court of the District Judge has been constituted under Section 3 of the Bengal, Agra and Assam Civil Court Act. Section 7, Civil Procedure Code does not, therefore, bar the applicability of Section 115, Civil Procedure Code to a case decided by the District Judge.

5. Section 27 of the Act reads as follows:-

"Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final".

A plain reading of this section gives finality only to decrees or orders passed by a Court of small causes. The section does not give finality to the orders passed by courts other than courts of small causes. There is thus no apparent bar to a case decided by the District Judge being revised by the High Court under Section 115, Civil Procedure Code. The learned counsel for the opposite-party placed reliance on the case of *South Asia Industries (P) Ltd. v. S.B. Sarup Singh*¹, in support of his contention that the order of the District Judge passed under Section 25 of the Act is final. The Supreme Court however had to consider in that case Section 43 of the Delhi Rent Control Act, 1958, which reads as follows:-

"43. Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding".

It was held in this case that after the appeal was decided by the High Court under Section 39(1) of the Delhi Rent Control Act, an appeal against the appellate order was not maintainable under Clause 10 of the Letters Patent, Lahore. It is clear from Section 43 itself that the appellate order was made final and hence an appeal against the appellate order was held to be barred. The wordings of Section 27 of the Act do not however give any finality to the order passed by the District Judge under Section 25 of the Act. Moreover, when Section 27 of the Act uses the words "Save as provided by this Act", it means that the order must be passed under Section 25 in accordance with law and the High Court, in its powers under Section 115, Civil Procedure Code does nothing except to determine whether the powers had been exercised under Section 25 of the Act in accordance with law or not. The revisional powers of the High Court only control the exercise of the power by the District Judge under Section 25 of the Act and we find nothing in Section 27 of the Act to debar the High Court from exercising such power.

6. Learned counsel for the opposite-party, in support of his third contention has urged that Section 25 of the Act gave power of revision not to the 'court of the District Judge' but to the 'District Judge' in his personal capacity and the District Judge was thus a *persona designata* and not a court when he exercised powers under Section 25 of the Act. The further contention is that in any case, he was not a 'court subordinate' to the High Court. For determining whether an authority acts as a court or as a *persona designata*, the nature of the jurisdiction which he

exercises and the manner in which he exercises that jurisdiction, have to be considered. It was held in the case of *Chatur Mohan v. Ram Behari Dixit*², that a Munsif exercising power under Section 7-E

¹ AIR 1965 SC 1442

² AIR 1964 All 562

of the U.P. (Temporary) Control of Rent and Eviction Act, acted not as a persona

designata but as a 'court'. Section 7-E of that Act permits a tenant to apply to the Munsif, having jurisdiction, for an order to the landlord to carry out repairs.

7. In the case of *Ram Chandra Aggarwal v. State of Uttar Pradesh*², the definition given in Osborn's Concise Law Dictionary, 4th Edn. of the expression persona designata was accepted. The meaning given therein is "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character". We have no doubt that the 'District Judge' in Section 25 of the Act is a person filling a particular character, i.e. the character of a presiding officer of a district court. Learned counsel for the opposite party, however placed reliance on the following observation in that case:-

"The power is not to refer the matter to the presiding Judge of a particular Civil Court but to a Court. When a Special or local law provides for an adjudication to be made by a constituted Court - that is, by a Court not created by a special or local law but to an existing Court it in fact enlarges the ordinary jurisdiction of such a Court. Thus where a special or local statute refers to a constituted Court as a Court and does not refer to the presiding officer of that Court the reference cannot be said to be to a persona designata".

This case however does not lay down the reverse proposition that where the reference is to the presiding officer of a court, it should mean to refer to him as a persona designata and not as court.

8. In the case of *Central Talkies Ltd., Kanpur v. Dwarka Prasad*³, the observation of Schwabe, C.J., in *Parthasarathi Naidu v. Koteswara Rao*⁴) to the effect that "persona designata" are "persons selected to act in their private capacity and not in their capacity as Judges" was approved. In the present case, it cannot be doubted that the District Judge was appointed as a revising authority under Section 25 of the Act as the presiding officer of the district court.

9. The jurisdiction which is exercised by the courts constituted under the Act, is the same as is exercised by the ordinary civil courts. Section 15 of the Act defines the nature of suits which can be taken cognizance of by courts of small causes. Sub-section (2) of Section 15 of the Act runs as follows:-

"Subject to the exceptions specified in that Schedule and to the provisions of any

enactment for the time being in force, all suits of a civil nature, of which the valuation does not exceed one thousand rupees, shall be cognizable by a court of small causes."

Section 16 of the Act states that the suits which are cognizable by courts of small causes shall not be tried by any other court. Sections 15 and 16 of the Act thus make it clear that

² AIR 1966 SC 1888 ⁴(ILR 47 Mad 369) : AIR 1924 Mad 561 FB

³ AIR 1961 SC 606

the jurisdiction, which the court of small causes exercises, is jurisdiction of the civil court inasmuch as it tries suits of a civil nature. Section 17 of the Act makes the procedure prescribed in the Code of Civil Procedure, 1908, applicable to the courts of small causes in all suits cognizable by them and in all proceedings arising out of such suits. Further, Section 25 of the Bengal, Agra and Assam Civil Courts Act provides that the State Government may confer upon any Civil Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Act for the trial of suits cognizable by such courts up to a particular pecuniary limit and also provides for withdrawal of jurisdiction so conferred. From the aforesaid provisions, it is amply clear that the jurisdiction, which a court of small causes exercises, is the same as the jurisdiction of a civil court except that only specified suits of civil nature are to be tried by it.

10. The power of revision exercised by District Judge, under Section 25 of the Act, being a power in relation to the decision of a civil suit, cannot be of a nature different from the ordinary judicial power of a civil court while deciding a civil suit. The District Judge, under Section 25 of the Act, has to satisfy himself that the decree or order made in any case decided by a court of small causes, was in accordance with law and has power to pass such orders with respect thereto as he may think fit. He can maintain, modify or set aside the decree and thus exercise jurisdiction which the court of first instance could. His powers and functions are, therefore, of the same nature as of an ordinary civil court. The procedure to be adopted by the District Judge, in view of Section 17(1) of the Act, will be the same as prescribed by the Code of Civil Procedure. Considering the nature of the powers exercised by the District Judge under Section 25 of the Act, it has to be held in the words which the Privy Council used in the case of *Balkrishna Udayar v. Vasudeva Ayyar*⁵, that in deciding the case under Section 25 of the Act, the District Judge exercises his powers as a Court of Law and not merely as a *persona designata* whose determinations are to be treated as judgments of a legal tribunal. The orders which the Dist. Judge may pass under Section 25 of the Act, we have no doubt will amount to judgments of a legal tribunal and he will be deemed to be acting as a court exercising civil jurisdiction.

11. As pointed out in the case of *Hari Shankar v. Rao Girdhari Lal Chowdhury*⁶, the power to hear a revision is generally given to a superior court so that it may satisfy itself that a particular case has been decided according to law. The court of small causes, when deciding a suit passes decree of a nature which a civil court can pass, and the power of revision of that order can only be given to a superior civil court. The court cannot ordinarily be held to be subordinate to a

persona designata. Normally, a court is subordinate only to a superior court. It is only because the court of small causes is subordinate to the district court that the District Judge has been given the power of revision under Section 25 of the Act, and as such, the power must be deemed to be given to the District court and not to the District Judge as a persona designata.

12. Looking at the nature of the jurisdiction exercised by the District Judge and the procedure to be followed by him in deciding a revision, we have no doubt that the 'District Judge' under Section 25 of the Act means a 'district court'. "District Judge" has

⁵44 Ind App 261

⁶AIR 1963 SC 698

been defined in the U.P. General Clauses Act as well as the General Clauses Act, 1877 to mean "the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction." This also points to the conclusion that when the Legislature used the word 'District Judge' in Section 25 of the Act, it means the 'Judge of the Principal Civil Court of original jurisdiction', i.e., the district court. The District Judge, thus exercises the powers under Section 25 of the Act not in any capacity other than that of the presiding officer of the district court. The decision of the case by him will, therefore, be the decision in the case by the district court.

13. We are unable to agree with the contention of the learned counsel that the intention of the Legislature to be read from Sections 25 and 27 of the Act was to oust the jurisdiction of the High Court under Section 115, Civil Procedure Code. Neither of the two sections contains any such legislative intent. The High Court has always been exercising revisional jurisdiction in respect of suits decided by courts established under the Act. The High Court exercises its supervisory jurisdiction in respect of all suits of civil nature taken cognizance of by subordinate courts. Even when the power of revision was conferred on the High Court under Section 25 of the Act, the power of revision under Section 115, Civil Procedure Code was not taken away by that Act. A provision was, however, made in Section 7, Civil Procedure Code to avoid over-lapping of powers, and it was enacted therein that the provisions of Section 115, Civil Procedure Code shall not extend to courts constituted under the act. After the amendment in 1957, although the revisional powers have been conferred on the District Judge no consequential amendment has been made in Section 7, Civil Procedure Code so as to exclude the applicability of Section 115, Civil Procedure Code to cases decided by the District Judge. In the absence of express words, it cannot be accepted that in amending Section 25 of the Act, the intent of the Legislature was to deprive the High Court, which has the over-all responsibility for dispensation of justice in the State and exercises both judicial and administrative control over the subordinate courts, of its revisional jurisdiction under Section 115, Civil Procedure Code in respect of cases decided by the District Judge under Section 25 of the Act.

14. We are, therefore, unable to hold that Section 115, Civil Procedure Code is not applicable to cases decided by the Dist. Judge under Section 25 of the Act.

15. Our answer to the question referred to us is thus in the affirmative.

16. Let the case be listed again before the learned single Judge with our answer to the question referred.

Reference answered.