ALLAHABAD HIGH COURT

Har Prasad Singh

Vs.

Ram Swarup

Civil Revn. No. 943 of 1972 connected with Civil Revn Nos. 1251, 1265, 1266, 1268, 1276 and 1289 of 1972.

(Satish Chandra , A.K. Kirty and P.N. Bakshi, JJ.)

13.05.1972. 06.03.1973

JUDGMENT

Kirty, J.

1. Before this Bench, constituted by the learned Chief Justice, following questions fall for consideration and answer : -

> (1) Will Civil Revisions arising out of suits of the value of less than twenty thousand rupees or arising out of other proceedings filed in this Court before the U. P. Civil Laws Amendment Act No. 37 of 1972 came into force, not lie here and will have to be sent to the District Courts?
> (2) In case the order sought to be revised is passed by a District Judge or any officer exercising the powers of District Judge in an appeal or revision arising out of an original suit of the value of less than twenty thousand rupees, where will a revision lie, if at all?
> (3) Does no revision lie from proceedings other than original suits ?

2. The above questions have arisen on account of the amendment in Section 115 of the Code of Civil Procedure (hereinafter referred to as the Code) made by Section 6 of the Uttar Pradesh Civil Laws Amendment Act, 1972. This Act, passed by the State Legislature, received the assent of the President of India on 12-9-1972 and was published in the U. P. Gazette dated 16-9-1972. The notification under Section 1 (3) of the Act appointing 20-9-1972 as the date of its enforcement was published in the Gazette of the same date. In the statement of objects and reasons given in the Bill published on July 28, 1972 it was mentioned :-

> "In the Code of Civil Procedure, 1908 an Uttar Pradesh amendment made in Section 115 conferred concurrent powers of revision on District Judges along with the High Court. It is now proposed that in cases of a value below Rs. 20,000/- this power may be exercised by District Judges alone and in cases of higher valuation this power may be exercised by the High Court. This will eliminate one of the causes of delay in the disposal of suits."

Section 115 of the Code was previously amended by Section 3 of U. P. Civil Laws (Amendment) Act, 1970 (U.P. Act 14 of 1970).

3. Section 115 of the Code, in its original form, read as below :-

> "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court 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 may make such order in the case as it thinks fit."

Section 3 of U. P. Act 14 of 1970 provided that for the words "High Court" wherever occurring in Section 115, the words "High Court or District Court" shall be substituted, and that at the end the following proviso shall be inserted :

> "Provided that nothing in this Section shall be construed to empower the District Court to call for the record of any case arising out of an original suit of the value of twenty thousand rupees or above."

As amended by Section 6 of U. P. Act 37 of 1972. Section 115 now reads :

> "The High Court in cases arising out of original suits of the value of twenty thousand rupees and above, and the District Court in any other case 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 may make such order in the case as it thinks fit."

4. The first question expressly relates to civil revisions filed in this Court before September 20, 1972, i.e., before U. P. Act 37 of 1972 came into force. Intrinsically, there is nothing in the amended Section 115 nor in Act 37 of 1972 requiring revisions which were pending in this Court on the said date to be transferred to the District Courts concerned; nor is it provided or even indicated as to how such revisions are to be dealt with by the High Court. Besides amending Section 115 of the Code, the Act also amends Sections 15 and 25 of the Provincial Small Cause Courts Act, 1887 and Sections 3, 20, 34, 39 and 43 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (Act XIII of 1972). It also amends Order 15 of the Code and Section 25 of the Bengal, Agra and Assam Civil Courts Act, 1887. Section 9 of Act 37 of 1972 contains "transitory provisions" and expressly provides that certain suits (not being suits in which the recording of oral evidence for any party has commenced or concluded previously) instituted before the date of commencement of the Act and pending in Courts having jurisdiction immediately before that date "shall upon the conferment of jurisdiction or enhanced pecuniary jurisdiction on a Civil Judge. Munsif. District Judge or Additional District Judge or on a Court of Small Causes under the said provisions (i.e. provisions of the Act) stand transferred to such court and shall be decided by that Court." The said Section 9, however, applies to suits only and, at that, only those suits as are specifically mentioned therein. It is not possible to hold nor is there any reason to suppose that the Legislature was not aware that on the date of the enforcement of the Act revisions filed in the High Court before that date would remain pending in that Court. The absence of any like provision in the Act in respect of such revisions cannot be viewed as or deemed to be accidental. On the contrary, the very act of the Legislature in

enacting Section 9 making transitory provisions only in respect of certain specified suits, clearly reveals the intention of the legislature that such revisions are to remain unaffected by the amendment made in Section 115 of the Code.

5. The State Legislature previously enacted the Uttar Pradesh Civil Laws Amendment Act, 1970 (Act 14 of 1970) amending inter alia Section 115 of the Code and Section 21 of the Bengal. Agra and Assam Civil Courts Act, 1887. By Section 4 (1) of this Act it was provided that an appeal from a decree or order of a Civil Judge shall lie to the District Judge where the value of the original suit in which or in any proceeding arising out of which, the decree or order was made, whether instituted, commenced or decided before or after the commencement of the Uttar Pradesh Civil Laws Amendment Act, 1968 (President's Act XXXV of 1968) was less than twenty thousand rupees; and to the High Court, in any other case. By Section 4 (1-A) of Act 14 of 1970 it was provided as follows : -

> "An appeal from a decree or order of a Civil Judge where the value of the original suit in which, or in any proceeding arising out of which, the decree or order was made exceeded ten thousand rupees but was less than twenty thousand rupees instituted in the High Court before the date of commencement of the Uttar Pradesh Civil Laws Amendment Act, 1970, and pending in the High Court immediately before the said date, not being an appeal in which arguments have been concluded before the said date and only judgment disposing of the appeal remains to be pronounced, shall stand transferred to the District Judge having jurisdiction who may either decide it himself or assign it to any Additional Judge subordinate to him." Section 4 (1-A), though it related to pending appeals, also sufficiently shows that the Legislature was very much alive to the necessity of making an express provision whenever it was intended that pending cases shall not be dealt with by the Court in which they were pending on the date of the enforcement of an enactment which conferred jurisdiction on another Court, but shall be dealt with by such other Court. Had it been the intention of the Legislature that, on the coming into force of Act XXXVII of 1972, the High Court shall no longer deal with or dispose of pending revisions but they shall be dealt with and disposed of by District Courts an express provision in that

behalf would certainly have been made.

6. Section 25 of the Provincial Small Cause Courts Act, 1887 conferred exclusive jurisdiction on the High Court to revise the decrees or orders made in any case decided by a Court of Small Causes. This section was amended by U. P. Act XVII of 1957 which came into force on 4-6-1957, and in place of the original section, the following was substituted : -

> "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 call for the record of the case and pass such order with respect thereto as he thinks fit."

The said amending Act did not contain any transitory provision, and related to the said Section 25 only. In *N. S. Dal Mill v. Firm Sheo Prasad.* [1] Desai and Beg JJ. dismissed the revision filed in the High Court under Section 25 on 27-7-1957 against the decree passed on 27-4-1957 holding inter alia that on and from 4-6-1957 only the District Judge had exclusive jurisdiction to revise the order of the Court of Small Causes even though it was passed before the Amendment Act came into force. A Full Bench of three learned Judges, including Mootham, C. J., in *Om Prakash v. Motilal.* [2] considered the effect of the Amending Act on pending revisions, that is, revisions filed in the High Court before 4-6-1957, and the correctness of the view taken in N. S. Dal Mills case (supra). The question referred to the Full Bench was : -

> "In what way are applications in revision filed in this Court under Section 25 of the Provincial Small Cause Courts Act prior to 4th June, 1957 affected by the substitution of a new Section 25 for that section by the U. P. Act XVII of 1957 ?"

This reference was occasioned by a decision of Desai, J. in Civil Revision No. 789 of 1950 in which relying on AIR 1958 Allahabad 404 (supra) he held that the High Court had no jurisdiction on and from 4-6-1957 to decide pending revisions awaiting final hearing and directed the revision application to be returned for presentation to the District Judge. The Full Bench overruled the view taken by Desai J. and held that the High Court retained jurisdiction to hear

applications in revisions - filed in the High Court under Section 26 of the Provincial Small Cause Courts Act prior to 4th June, 1957, in all cases in which prior to that date the Court had directed the record to be called for. The learned Chief Justice based his opinion partly on clause (b) of Section 6 of the U. P. General Clauses Act holding that the act of calling for the record or issuing of notice is something done under the repealed section, and partly on the well known maxim nova constitution future is formam imponere debet, non preterits - a new state of the law ought to affect the future, not the past and the principle (as expounded by him) embodied in the maxim. V. Bhargava J., who agreed with the answer proposed by the learned Chief Justice, based his opinion entirely on the same clause (b) of Section 6 as interpreted by him. Chaturvedi, J. agreed with Bhargava J. The counsel for the applicants in the cases before us have placed strong reliance on the following observations of V. Bhargava J. : -

> "It would appear to be anomalous that, in a case where both the accrual of the right as well as the remedy or legal proceeding are provided in the same statute, both should remain unaffected as a result of the amending or repealing Act; whereas, in a case where the right has accrued under a statute which is not amended or repealed at all but the remedy or legal proceeding is under the statute which is amended or repealed, the remedy or legal proceeding should be affected by the amending or repealing Act. It appears to me that in such a case, clause (b) of Section 6 of the U. P. General Clauses Act applies and preserves the continuity of the remedy or legal proceedings already commenced as being something duly done or suffered under the amended or repealed Act. Clause (b) of Section 6 of the U. P. General Clauses Act should, therefore, be interpreted as covering anything duly done not only by parties litigating or claiming the right but also anything duly done by the Court before which the remedy or legal proceeding is commenced."

It is argued that the above being the pronounced view of two learned Judges must be applied in the instant cases and, if correctly applied, question No. 1 must be answered in favor of the applicants. The argument is forceful and weighty.

7. Section 6 of the U. P. General Clauses Act, 1904 corresponds to Section 6 of

the General Clauses Act, 1897 which is a Central Act. Both these sections are, practically in all respects, identical. Therefore, the view taken by the Supreme Court in construing the ambit and effect of Section 6 of the Central Act must be accepted to be applicable and binding in construing Section 6 of the U. P. Act. In *State of Punjab v. Mohar Singh Pratap Singh,* [3] it was held, inter alia, as follows :-

"Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is a repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material."

It was further observed : -

> "The provisions of Section 6 of the General Clauses Act will in our opinion, apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment."

This view was reiterated in *Indra Sohan Lal v. Custodian. Evacuee Property, Delhi.* [4] The same view was taken by a Full Bench of this Court in *Raghuraj Singh v. Sobhaman,* [5] Agarwala J. who delivered the judgment with the concurrence of the other two learned Judges (Kidwai and Chandramani JJ.) observed in paragraph 10 of the judgment as follows :-

> "..... even if an enactment is retrospective in operation, it should not be given a larger retrospective effect than is absolutely necessary

> ..... Even where an enactment is retrospective, it has been held that it does not necessarily affect pending cases. Under Section 6, General Clauses Act, 1897, the repeal of an enactment does not prima facie affect pending actions which are to be decided as if the repealed enactment was still in force....."

8. It has already been mentioned that intrinsically there is nothing in U. P. Act XXXVII of 1972 nor in Section 115 of the Code as amended by Section 6 of the said Act from which any legislative intention can be spelled out or gathered that the amendment in Section 115 of the Code was to operate with retrospective effect. It has also been pointed out that no provision was made in the Act to the effect that all pending revisions shall stand transferred to the District Courts concerned. Nor was it provided therein that the High Court shall transfer all such revisions to the District Courts concerned. It is true that the legislature often inserts a saving clause or a specific provision in regard to pending cases; but, as has been observed by the Supreme Court, the mere fact that the enactment in question does not contain any saving clause is not decisive of the question as to whether the Act is to operate retrospectively so as to affect pending cases as well. Although U. P. Act XXXVII of 1972 does not contain any saving clause yet, as pointed out earlier, there is in the Act a section containing "transitory provisions", but that section viz., Section 9, does not relate or even refer to pending revisions in the High Court. The necessity and utility of a saving clause in an enactment which repeals any existing law with retrospective effect may be almost indispensable whenever the legislature not only repeals an existing law but simultaneously re-enacts the law with necessary amendments conferring exclusive jurisdiction on a court and further provides that the re-enacted law shall be deemed to have been always in force. Whenever such a deeming clause is inserted in an enactment by legal fiction, the re-enacted and amended provision has to be treated as the only law on the subject notwithstanding the fact that in fact there did exist another law dealing with the same subject, although in a different manner, until the repeal of such law. Under such circumstances, in the absence of a saving clause Section 6 of the General Clauses Act can be of no avail because by inserting the deeming clause in the Act, the legislature must be held to have expressed its intention to the contrary within the meaning of Section 6. Section 6 of U. P. Act 37 of 1972 which amends Section 115 of the Code does not contain any deeming clause

although in Section 8 of that very Act, in regard to amendments made in U. P. Act XIII of 1972, such deeming clauses have been inserted in respect of the amendments made in several sections of the said Act XIII of 1972. Having regard to all that has been said above, it can, in my opinion, be unhesitatingly concluded that the amendment in Section 115 of the Code by Section 6 of Act XXXVII of 1972 has no retrospective operation so as to affect revisions which have been filed in this Court prior to 20th September, 1972; whether in such revisions record had been sent for or not and whether notice to the opposite parties was issued or not.

9. Reference has already been made to the Full Bench decision of this Court in AIR 1958 Allahabad 409 (supra) which dealt with a somewhat similar situation arising as a result of U. P. Act XVII of 1957 by which the jurisdiction of the High Court under Section 25 of the Provincial Small Cause Courts Act was abolished and exclusive jurisdiction was conferred on the District Courts. That case dealt with pending revisions under Section 25 of the Provincial Small Cause Courts Act. It is not for us to say whether the question referred to the Full Bench was correctly answered or not, but at the same time it may be mentioned that it is not wholly correct to say that a provision for a revision, whether under Section 25 of the Provincial Small Cause Courts Act or under Section 115 of the Code, does not create any legal or vested right at all in a litigant. It is not necessary in this case to examine in detail the basic and essential distinction between a revision and an appeal. Assuming, however, that the right to file an application in revision is not "a vested right" like that of a right of an appeal, the question still remains as to whether the law which provides for a revision does merely confer jurisdiction and powers on the court concerned to revise the decree, order or decision of the court below, or it also confers a corresponding right to a litigant to apply to the court, invoking thereby the aid and assistance of the court for removing his grievance, real or supposed, against the decree, order or decision of the court below. If the provision for revision in any enactment or law also confers even if by necessary implication, such a right on a litigant, it will not be right to say that in respect of a revision a litigant has no legal right.

10. Although the exercise of jurisdiction and powers under Section 115 of the Code is discretionary (this was not disputed at the Bar), the Court has to act

judicially as a Court and not arbitrarily. Therefore, an application in revision duly filed by a litigant must necessarily be dealt with judicially and disposed of by a judicial order. In my opinion, the Court cannot refuse to entertain a revision on the ground that a litigant has no right to file a revision, nor can the Court refuse to hear the applicant or the opposite party who has appeared on being served with notice under the orders of the Court. The provision for filing a revision within the period prescribed under the Limitation Act, 1963 and the provision for payment of court fees on a revision application in the Court Fees Act, also, to my mind, positively imply that a litigant has a right to invoke the exercise of jurisdiction and power of the Court. Although the jurisdiction and power to revise may be supervisory in nature, yet revisions may, not unoften, vitally affect litigants. Take for instance the case where an issue in respect of the plea of limitation or an issue in respect of the plea of res judicata has been decided as a preliminary issue in a suit, can it be disputed that the finding of the trial Court on such issue must necessarily affect either the plaintiff or the defendant adversely. If this cannot be disputed. I fail to see how can a Court of revision acting judicially refuse to entertain an application in revision under Section 115 of the Code against any such finding when no appeal lies to the Court against such finding. Perhaps it will not be out of place to mention here that even Article 226 of the Constitution does not in terms contain any provision for filing a petition in the High Court, nor in terms does it confer any right on an aggrieved citizen to file a petition invoking the aid of the High Court under the said Article. Yet unquestionably, Article 226 is a provision affording extraordinary remedy to a citizen. To my mind, whenever statutes contain provisions like Article 226 of the Constitution or Section 115 of the Code such provisions are essentially intended to afford remedy to an aggrieved litigant on specified grounds or under specified circumstances although the actual granting of relief may have been left largely in the judicial discretion of the Court or Courts concerned.

11. The view which I have expressed in regard to revisions finds support from the decision of the Supreme Court in *Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat.* [6] in which it was observed that in certain respects a civil revision petition can be considered to be en appropriate form of appeal and that :-

> "Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the Code of Civil Procedure circumscribes the limit of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the Court which is being invoked and exercised in a wider and larger sense."

In this case, the Supreme Court referred with approval to the observations made by the Privy Council in *Nagendra Nath Dey v. Suresh Chandra Dey.* [7] and *Raja Rajeshwara Setupati Avergal v. Kamid Rowthen.* [8] A Division Bench of this Court in *Hariram v. Deputy Director. 1971 All WR (HC) 108* observed, relying on the decision of the Supreme Court in AIR 1970 Supreme Court 1 (supra), that if a revision is filed within time, the suit or proceeding should broadly speaking be deemed to continue until the revision is decided. The Bench further observed that a revision may be considered to be an appropriate form of appeal from the judgment in a suit of Small Causes nature. The observations made with reference to revisions against judgments or decrees of Small Cause Courts can also be appropriately applied to revisions under Section 115 of the Code. I am, therefore, firmly of opinion that once a litigant has filed an application in revision in the High Court, the revision must be deemed to be pending irrespective of the question as to whether the record has been sent for in the case or notice has been issued to the opposite parties. All such revisions. I am of further opinion, remain unaffected by the amendment made in Section 115 of the Code by Section 6 of U. P. Act XXXVII of 1972.

12. Section 24 of the Code, inter alia, empowers the High Court to transfer any suit, appeal or other proceeding pending before it, for trial or disposal to any Court subordinate to it and competent to try or dispose of the same. But Section 24 does not provide for wholesale transfer of suits, appeals or other proceedings. The power of transferring cases has to be exercised, ordinarily, in respect of and with reference to individual cases. Under this section, it is not obligatory upon the High Court to transfer any suit, appeal or other proceedings (the word "proceeding", in my opinion, would also include a revision). In the

absence of any specific or mandatory provision of law, which is not to be found in U. P. Act XXXVII of 1972, the High Court, in my opinion, cannot resort to Section 24 of the Code for transferring all the pending revisions to the District Courts, whether the record in such revisions has been sent for or whether notice to the opposite parties has been issued or not.

13. The view, which I have expressed hereinabove also finds support from the observations made by Satish Chandra, J. in *Gauri Shankar v. S. N. Tewari.* [9]

14. Coming now to the second question, there is little room for doubt on the plain and clear language of Section 115 of the Code, as now amended, that no revision shall lie at all, either in the High Court or in the District Court. The jurisdiction and powers of the High Court under the amended Section are confined only to cases "arising out of original suits of the value of twenty thousand rupees and above". As far as the District Courts are concerned, the words "in any other case" are no doubt capable of being construed comprehensively so as to include any case other than a case in which the order sought to be revised arises out of an original suit of the value of twenty thousand rupees and above; but, even so construed, the subsequent words "subordinate to such ..... District Court" in the section clearly exclude orders passed by District Judges or Officers exercising powers of District Judge. Question No. 2, thus, must be answered in the negative.

15. The third question poses a queer conundrum. As already shown above, no revision would lie in the High Court in cases arising put of any proceeding other than an original suit of which the valuation is rupees twenty thousand or more. The jurisdiction and powers of the District Courts, however, apparently seem to be completely unlimited and unfettered in cases where the order sought to be revised does not arise out of an original suit, but arises out of any other proceeding, irrespective of the valuation, subject-matter or nature of such proceeding. No doubt such would be the position if the words "in any other case" are construed comprehensively as already indicated above. But then a somewhat strange result will follow - while the High Court, the highest Court in the State would possess a very, very limited and restricted revisional power under Section 115 of the Code, the District Court, which is subordinate to the High Court, will exercise revisional jurisdiction and powers under the same

section over the whole revision filed absolutely, excepting, if I may use that expression, the revisional enclave of the High Court. I am not prepared to think or accept that such was the intention of the Legislature. If, however such a result must necessarily follow upon a proper and legitimate construction of the amended section, the Court can do nothing about it. It may be a case of lacuna or casus omissus in the legislation; but if that be so, it is for the Legislature to consider and do the needful.

16. But the point for consideration still remains whether the words "in any other case" must need be given such wide meaning. In my opinion, such wide interpretation need not necessarily be given. The words "in any other case", in the context, only refer to and have been used in contradistinction to the preceding words "in cases arising out of original suits". Therefore, it can be reasonably held, without doing any violence to the language of the amended Section 115 of the Code, that the words "in any other case" refer to and mean a case arising out of an original suit of which the valuation is below twenty thousand rupees. Such an interpretation would also lead to queer and, may be, undesirable results because under various laws and statutes judicial proceedings other than suits lie in and have to be dealt with by the civil courts, but in respect of and over such proceedings there will be no supervisory control by way of revision under the section. But, to my mind, that would be, again if I may use the expression, "the lesser evil", and I would prefer it to the other.

17. As a result of the above discussion, the questions referred to us must be answered as follows : -

> Question No. 1 : All revisions filed in the High Court under Section 115 of the Code of Civil Procedure prior to September 20, 1972, when U. P. Act 37 of 1972 came into force, shall continue to lie and be dealt with by the High Court in the same manner as before. That is to say, such revisions remain and shall remain unaffected by the amendment, whether any order therein calling for the record or directing notice to issue to the opposite parties has been passed or not.
> Question No. 2 : No revision shall lie.
> Question No. 3 : No revision shall lie.

18. The cases may be listed before the appropriate Bench with these answers.

Satish Chandra, J.: - I agree.
P.N. Bakshi, J.:- I agree.

Revision answered accordingly.

Cases Referred.

1. AIR 1958 All 404
2. AIR 1958 All 409
3. AIR 1955 SC 84
4. AIR 1956 SC 77
5. AIR 1951 All 485
6. AIR 1970 SC 1
7. AIR 1932 PC 165 at P. 167
8. AIR 1926 PC 22
9. 1968 All LJ 933 at p. 938 (FB)