

ALLAHABAD HIGH COURT

Phool Wati

Vs.

Gur Sahai

Civil Revn. No. 1523 of 1972

(D.S. Mathur, C.J. (on difference of opinion between G.C. Mathur and H.N. Seth, JJ.))

25.02.1974

JUDGMENT

D.S. Mathur, C.J. (On Difference Of Opinion Between G. C. Mathur And H. N. Seth, JJ.)

1. On account of the difference of opinion between G. C. Mathur and H. N. Seth, JJ., the papers were laid before the Chief Justice for referring the matter either to a third Judge or to a Bench of three Judges. As there existed no conflict in the decisions of the Court it was not considered necessary to refer the matter to a Full Bench. It has been heard by me and after I have given my opinion, the revision shall go back to the Bench for expression of final opinion on the question of law involved.

2. The present revision arises out of an order passed by the Additional District Judge of Meerut in a revision under Section 115, Civil P. C. The question for consideration is whether the present revision is maintainable. In many other revisions the order passed by the District Judge in exercise of the appellate jurisdiction had been challenged. The Division Bench decided to express an opinion on the maintainability of the revisions and to leave the question of admission of the revisions to a single Judge. G. C. Mathur, J. is of opinion that under Section 115 of the Civil Procedure Code, as amended by Section 2 of the U. P. Civil Laws (Amendment) Act, 1973, no revision lies against orders passed by the subordinate Courts in appeals or revisions. H. N. Seth, J. is of the contrary view provided that in deciding the appeal or revision the appellate or the revisional Court has committed an error of jurisdiction of the nature mentioned in clauses (a) to (c) thereof.

3. The material part of Section 115, Civil P. C. as it originally stood, is 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..... the High Court may make such order in the case as it thinks fit."

The section was first amended by Section 3 of the U. P. Civil Laws (Amendment) Act, 1970 (U. P. Act 14 of 1970) by substituting the words "High Court or District Court" for the words "High Court" wherever they occurred in Section 115. At the same time, the following proviso was 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."

4. Why the amendments were made would appear from paragraphs 2 and 4 of the Statement of Objects and Reasons which run as follows :-

"2. It was also decided to amend the Bengal, Agra and Assam Civil Courts Act, 1887, for increasing the pecuniary appellate jurisdiction of the District Judges from Rs. 10,000 to Rs. 20,000 with a view to reducing arrears in the High Court. The fall in the value of the rupee since 1887 (when the limit of Rs. 5,000 was fixed) also justified further increase in the appellate jurisdiction of District Judges.

4.....In particular, it is *inter alia* proposed to confer on District Courts, concurrently with the High Court, the power of revision in respect of cases in which the appeal would lie to the District Court. This will also help in reducing the pressure of work on the High Court."

5. It shall be noticed that the amended Section 115 gave concurrent jurisdiction to the High Court and the District Court in respect of cases arising out of original suits of the value of less than twenty thousand rupees and gave the High Court exclusive jurisdiction in respect of cases arising out of suits of the value of twenty thousand rupees and above. The words "arising out of an

original suit" were used in Section 115, Civil P. C. for the first time. The meaning of the expression was not defined in the Code. It shall be found that words of a similar nature had been used in Section 21 of the Bengal, Agra and Assam Civil Courts Act.

6. Section 115 was again amended by Section 6 of the U. P. Civil Laws Amendment Act, 1972, by substituting the words "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" for the words "the High Court or District Court" and adding the words "as the case may be" after the words "High Court or District Court" occurring the second time. The proviso to the section was omitted. Section 115, Civil P. C. as amended in 1972 runs as below :-

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

7. The material part of the Statement of Objects and Reasons while introducing the Bill is as below :-

"2. In the Civil Procedure Code, 1908 an Uttar Pradesh amendment made in Section 115 conferred concurrent powers of revision on District Judge 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."

8. The amendment was made to confer exclusive revisional jurisdiction on District Judges in cases of a value below Rs. 20,000/- and the High Court can exercise such jurisdiction only in respect of cases of a value of Rs. 20,000/- or above.

9. When the revisional jurisdiction of the High Court was curtailed the scope of the amended section was challenged and the following three questions were referred for opinion to a Full Bench of this Court, *Har Prasad Singh v. Ram Swarup*,¹

"(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 ?"

The Full Bench answered these three questions as below :-

"Question No. 1 :- All revisions filed in the High Court under Section 115 of the Civil Procedure Code 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."

10. In other cases, another question was raised whether Section 115 as amended in 1972 was retrospective in operation and applies also to cases arising out of suits instituted before September 20, 1972. This question was referred to a Full Bench of five Judges. However, to avoid any controversy, Section 115 was again amended by Section 2 of the U. P. Civil Laws (Amendment) Act, 1973. In view of this amendment it became unnecessary for the Full Bench to answer the questions referred to it. Section 115 as amended in 1973 now runs as below :-

"The High Court in cases arising out of original suits of the value of rupees twenty thousand and above including such suits instituted before

the 20th day of September, 1972, and the District Court in any other case, including a case arising out of an original suit instituted before the 20th day of September, 1972, 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 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 decided before the 20th day of September, 1972, and also all cases arising out of original suits of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section." Reasons for the enactment were given as below :-

"The Uttar Pradesh Civil Laws Amendment Act, 1972, which came into force on September 20, 1972, amended *inter alia* Section 115 of the Civil Procedure Code, 1908, so as to provide that in cases of suits valued below Rs. 20,000 the District Courts, alone (and not the High Court) shall be competent to entertain the revisions. A Full Bench has been constituted by the High Court to consider the question whether the aforesaid amendment to Section 115 would apply also in respect of cases instituted in the trial courts before September 20, 1972. The amendment proposed in clause 2 of the Bill is intended to clarify the legal position in this regard."

The above shall make it clear that the words "arising out of an original suit" were incorporated in Section 115 for the first time in 1970 and the expression was retained in the subsequent amendments without in any way restricting or enlarging its scope. There was also no attempt to define the meaning and the scope of the expression. The first question which naturally arises is what is meant by "a case arising out of an original suit." Where an order passed during the hearing of the original suit is challenged in a revision, it is without any dispute a case arising out of the original suit. After the decision of the suit there are many cases which can undisputedly be said to arise out of the original suit, for example, an application for restoration, review, execution or restitution made before the same court or an appeal or revision preferred before a higher court. They are all cases arising out of the original suit. Orders passed in a proceeding for restoration, review, execution or restitution or in appeal or revision can be challenged before the higher court : they are admittedly cases which arise out of

the miscellaneous proceeding or from the appeal or revision. Can it also be said that because such miscellaneous proceeding appeal or revision arises out of an original suit, such cases arising from the miscellaneous proceeding appeal or revision also arises from the original suit ?

11. The meaning of the word "arise" was considered in the Full Bench case of *Nirmal Dass Khaturia v. State Transport (Appellate) Tribunal, U. P. Lucknow*,² and the material observations made in that connection are :-

".....Where can a case be said to 'arise' for the purposes of the first proviso to Article 14 ? A case arises at the place where it originates, where it springs up or is born. A civil case arises where the cause of action wholly or in part arises. A criminal case arises where the offence has been committed.

There may be cases where an original order made in favor of the petitioner has been reversed or modified on appeal or revision on the other side, there may be cases where the original order has been confirmed by the appellate or revisional order. In either event when a writ is claimed against the appellate or revisional order, the case must be said to arise where the petitioner's right originally arose, that is the right which was adjudicated upon by the original order. It is that right which he pursues throughout the original proceeding, the appellate proceeding and thereafter in the High Court. It matters not that the original order has merged in the appellate order. The petition arises at the place where the right of the petitioner first arose."

12. The meaning of the expression "arising out of" was considered and has been reproduced, at page 363 of "Words and Phrases Legally Defined, Volume II" under the heading "course of employment" as below :

"The person entitled to compensation..... is a workman who in an employment suffers personal injury by accident arising out of and in the course of the employment. The words 'out of and in the course of the employment' are used conjunctively, not disjunctively. Upon ordinary principles of construction they are not to be read as meaning 'out of - that is to say, 'in the course of.' The former words must mean something

different to the latter words. The workman must satisfy both the one and the other. The words 'out of' point, I think, to the origin or cause of the accident; the words 'in the course of' to the time, place, and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place."

In both of these cases wider meaning was given to the word 'arise' and in determining where the case had arisen one had to see to the place of origin and in case of accident the source thereof. Coming to the instant case when the origin of the litigation is of importance a case arising out of an appeal or revision is still a case arising out of the original suit from the decree or order passed there in the appeal or revision, which is the direct source of the case had been preferred. In this view of the matter an order passed in appeal or revision which for the purposes of Section 115, Civil P. C. is a case shall be a case arising not only from the appeal or the revision but also from the original side and consequently if the law permits a revision in a case arising out of the original suit, it shall be maintainable even though the order sought to be challenged was passed in appeal or revision and not in the original suit.

13. As already mentioned above, the expression "arising out of the original suit" was used in Section 115, Civil P. C. for the first time when the section was amended in 1970. The amendment was made to give concurrent revisional jurisdiction to the High Court and the District Court, though under the proviso thereof, the jurisdiction of the District Court was excluded in cases arising out of an original suit of the value of twenty thousand rupees or above. Under the same Amending Act the appellate jurisdiction of District Judges was raised to decrees or orders, passed in suits of a value less than twenty thousand rupees. The underlying object of the amendments made in 1970 was that the pecuniary revisional jurisdiction of District Judge be the same as the appellate jurisdiction.

14. In case an order arising out of an original suit is merely an order passed in the original suit, and not an order passed in a miscellaneous proceeding or in an appeal or revision, it shall be possible for District Judges to entertain revisions in cases of a value of twenty thousand rupees or above. For example, an original

suit of a valuation of Rs. 20,000/- or above is dismissed for want of prosecution and eventually restored. The order setting aside the *ex parte* decree will, on acceptance of the above view, arise out of the miscellaneous proceeding and not out of the original suit and hence the proviso shall be no bar to the maintainability of the revision before the District Judge. It would mean that the District Judge shall not be competent to entertain a revision against an order passed in the original suit, but can entertain a revision against an order passed in a miscellaneous proceeding arising out of such original suit. Such could not be, and in fact, was not the intention of the Legislature.

15. The Statement of Objects and Reasons of an enactment cannot be utilized directly in the interpretation thereof where the provision is unambiguous and capable of only one interpretation; but where two views are possible, the Statement of Objects and Reasons can be looked into to know the circumstances in which the enactment was passed. Section 115 was amended in 1970 to confer on District Courts, concurrently with the High Court, the power of revision in respect of cases in which the appeal would lie to the District Court. In case restricted meaning is given to the expression "arising out of the original suit", the District Court shall have the revisional jurisdiction in miscellaneous proceeding even though had the order been subject of appeal, the appeal would not lie to that court.

16. Further, on the application of the rules originally laid down in Heydon's case and adopted by the Supreme Court in many reported decisions the expression must be given a wider meaning. It was observed in *M/s. Vrajlal Manilal and Co. v. State of Madhya Pradesh*,³

".....while construing such an enactment the court must examine the object and the purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning."

17. Section 115 was amended in 1970 to reduce the pressure of work on the High Court, but at the same time to ensure that orders passed in proceedings of higher valuation could be challenged only before the High Court. It was made clear in the object and reasons that the District Court could exercise revisional jurisdiction only in respect of cases in which the appeal would lie to the District Court. No revision under Section 115, Civil P. C., is maintainable if an appeal

lies against the order. Consequently, reference to appeal in the Statement of Objects and Reasons was to lay stress on valuation and not the maintainability of the appeal. In this view of the matter also, the revisional jurisdiction of the District Court must extend to orders passed in miscellaneous proceedings and not merely to orders passed in the original suit. To put it differently, a case arising out of the original suit is not merely a case wherein an order passed in the original suit is being challenged, but also an order passed in any miscellaneous proceeding arising out of the original suit and, therefore, also an order passed in appeal or revision arising out of the original suit.

18. Considering that the expression "cases arising out of original suit" has been retained in the subsequent amendments it must ordinarily be given the same wider meaning.

19. Even at the risk of repetition it may be mentioned that under Section 115, Civil P. C. as amended in 1972 the High Court had the jurisdiction to entertain revision in cases arising out of original suits of the value of twenty thousand rupees and above and the District Court in any other case. If the expression "arising out of original suits" is given a restricted meaning revision against orders passed in miscellaneous proceeding arising out of original suits of the value of twenty thousand rupees and above would lie before the District Judge and not the High Court which would be contrary to the object as contained in the Statement of Objects and Reasons while introducing the 1972 Amendment Bill.

20. In Section 115, Civil P. C. as amended in 1972 there were many lacunae. In view of the wording of the section there would be no revision against the order of a District Judge passed in an original suit of a valuation less than twenty thousand rupees. In fact, no revision would lie against any order passed by the District Judge whether in original suit or in appeal or revision. Further, a revision would lie before the District Judge against an order passed by Civil Judge in appeal, but no revision shall be maintainable against a similar order passed by the District Judge in appeal. Another controversy which had arisen and which was sought to be resolved by the 1973 Amendment, was whether the provisions were to apply retrospectively or prospectively. None of these lacunae could affect the validity of the section as it is for the Legislature to lay down if

the order passed by the subordinate court is or is not subject to revision. The Constitutional right of a party to move the High Court under Article 227 of the Constitution is not affected by the absence of a provision for revision.

21. When Section 115, Civil P. C. was further amended in 1973 both of these lacunae were made good. In the first part of the proviso to Section 115 as amended in 1973 it was clearly provided that in respect of cases decided before the 20th day of September, 1972, the High Court alone shall be competent to make an order under this section and this resolved the controversy which had that time been referred to a Full Bench for decision. The second part of the proviso tried to make good the other omission. The controversy, however, is as to the scope of this part of the proviso. Cases arising out of original suits decided by the District Court include orders passed in the original suit and consequently such revisions, which were earlier not maintainable, shall now lie to the High Court. The Full Bench of this Court had expressed the opinion that no revision lay against the order of the District Judge passed in exercise of his appellate or revisional jurisdiction, but after the 1973 Amendment such an issue has been raised. In case the expression "arising out of original suits" used in the proviso, in the same manner as it was incorporated at the prior stages is given a restricted meaning, revision shall lie only against orders passed by the District Judge in original suits and not in miscellaneous proceedings or in appeals or revisions; but if orders passed in miscellaneous proceedings are covered by the expression there is no reason why it be not extended to orders passed in appeal or revision.

22. Consequently, if the above expression "arising out of original suits" used in 1973 Amendment is given the same meaning as in the earlier amendments of 1970 and 1972, revision shall lie before the High Court against orders passed by the District Judge in appeal or revision even though such revisions were not maintainable under the 1972 Amendment.

23. However, if the 1973 Amendment is read in isolation and is not considered along with the amendments made in 1970 and 1972, it may be urged that the object of the Legislature in amending Section 115, Civil P. C. in 1973 was to make a provision on two points, namely, whether the amendments were retrospective or prospective in operation and also whether a revision may be

allowed against orders passed by the District Judge in an original suit. Section 115, Civil P. C. was amended at various stages to reduce the pressure of work before the High Court i. e. to reduce the institution of revisions before the High Court. Consequently, no provision for a revision against the orders of District Judge passed in appeal or revision was to be incorporated.

24. There can be no dispute in that there are drafting errors in 1973 Amendment. When revisions always lay and were to lie to High Court in cases arising out of original suits of the value of twenty thousand rupees and above, it was not necessary to add the words "including such suits instituted before the 20th day of September, 1972." These words are clearly superfluous and can be deleted. However, the expression "arising out of original suits of any valuation" in the proviso to Section 115, Civil P. C. cannot be regarded as redundant. If these words are overlooked a revision shall lie against any order passed by the District Judge whether in an original suit, appeal or revision. Consequently, these words cannot be excluded from consideration and the proviso as drafted will have to be considered as a whole and given a proper meaning.

25. It is a fundamental principle of construction that ordinarily words should not be added to a statute, nor the words used by the Legislature ignored. The duty of the Court, therefore, is neither to add words to a statute nor to subtract any words from it. Its plain duty is to gather the intention of the Legislature from the words used in the statute taking its plain and ordinary meaning. Words are not to be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context. It is against the rules of interpretation to add words to a provision, when the provision as it stands, is capable of only a reasonable meaning which would give effect to the intention of the Legislature even on the words as they stand, or where the language used is clear and unambiguous and is capable to only one interpretation. In the words of Lord Bramwell, the words of a statute never should in interpretation be added to or subtracted from, without almost a necessity. Legislation and Interpretation Jagdish Swarup 1968 edition, pages 129-130.

26. For the interpretation of 1973 Amendment without looking into the past history, it is not necessary to add, delete or subtract words for giving a reasonable meaning to the proviso. In such a case the expression "arising out of

original suits" must include orders passed in miscellaneous proceedings and, therefore, also to orders passed in appeals or revisions arising out of such suit. The controversy arises because in this view of the proviso the scope of revisions before the High Court is enlarged and instead of reduction of pressure there can be increase of work before the High Court. The question arises whether the courts of law would be justified to substitute words "orders passed in an original suit" for the words "all cases arising out of original suits," in the proviso to Section 115, Civil P. C. Considering that the Legislature used a similar expression "arising out of original suits" in the main provision and also in the proviso and similar expression had been used while amending Section 115, Civil P. C. in 1970 and 1972, the courts of law would be exceeding their jurisdiction if by substitution of words the scope of the proviso is materially altered. The duty of the courts of law is to interpret the law as passed by the Legislature and if that interpretation is not in consonance with the intention of the Legislature it can always further amend the provision to give effect to its intention.

27. In the end, it was contended by the learned Standing Counsel that the proviso ordinarily limits the scope of the main section and it must be interpreted in such a manner as not to enlarge the scope of the main provision. It is contended that the proviso must be given that interpretation by which the revisional jurisdiction of the High Court is not unnecessarily expanded. A consideration of the proviso shall make it clear that it enlarges the jurisdiction of the High Court in at least two matters by providing that in respect of cases decided before the 20th day of September, 1972, revision shall lie only to the High Court. The proviso also made a provision for revision against certain orders passed by the District Judge. The revisional jurisdiction of the District Judge was curtailed by the first part of the proviso. The proviso is thus not in the ordinary form. It is meant not only to restrict the jurisdiction but also to enlarge it. Consequently, the courts shall not be justified to depart from the ordinary meaning of the words used in the proviso on the assumption that the intention of the legislature was to the contrary.

28. For the reasons given above, I am of opinion that the words used in Section 115, Civil P. C. as amended in 1973 must be given their ordinary and plain meaning and the Courts of law shall not be justified to substitute words on the

supposition that the intention of the Legislature was to the contrary. In other words, a revision under Section 115, Civil P. C. as amended in 1973 is maintainable against an order passed by the District Judge in an original suit or in exercise of the appellate or revisional jurisdiction.

29. The papers shall now be laid before the Bench concerned.

Answered accordingly.

Cases Referred.

1. 1973 All LJ 343 (FB)
2. 1972 All LJ 70
3. AIR 1970 SC 129