

ALLAHABAD HIGH COURT

Oriental Insurance Co. Ltd.

Vs.

Dhanram Singh,

F.A.F.O. No.636 of 1989

(N.N. Mithal and G.D. Dubey, JJ.)

04.12.1989

JUDGEMENT

G.D. Dubey, J.

1. When this appeal first came before us, we were tentatively of the opinion that it would not be maintainable under the provisions of Section 173 of the Motor Vehicles Act, 1988, since the proceedings arose under the old Motor Vehicles Act. After hearing the learned counsel for the appellant, however, we disposed of the matter by our order dated 4th August, 1989 (reported in AIR 1990 Allahabad 30) holding that even an appeal arising out of proceedings under Section 110-A of the Motor Vehicles Act, 1939 would now be maintainable under Section 173 of the Motor Vehicles Act, 1988. The appellant has now moved an application for review of our earlier decision on the ground that while disposing of the question of maintainability of the appeal under Section 173 of the new Act, we have wrongly directed that such appeals must also comply with the conditions as are laid down in the section. It is contended that this aspect of the matter was also urged on earlier occasion but due to some oversight, this has not been considered in the light of the submissions made then. Having heard the learned counsel for the appellant at some length, we do feel that the cases that were cited earlier and also during the arguments now, the appellant did raise the question that an appeal under the old Motor Vehicles Act would lie under the new Act and that such appeal would be subject to the same conditions as were applicable to it under the repealed Act. We have, therefore, heard the submissions made by the counsel on that aspect again in the light of various cases touching upon the point involved herein.

2. The earlier case on which reliance has been placed by the learned counsel for the appellant is *Nagendra Nath Bose v. Mon Mohan Singha Roy*, ¹ In this case some of landlords (decree holder) had instituted a suit for rent against the tenant of a tenure for rent. The suit was decreed for realization of Rs. 1306-15 Annas and was put in execution. The tenure of the judgment debtor was put up to sale and one Satish Chandra Singh Chaudhury had purchased the same. Thereupon the judgment-debtor has applied to get the sale set aside but his case was dismissed for default. Against that order he preferred an appeal to the District Judge who dismissed it on the ground that it could not be entertained inasmuch as the provision of the amended Section 174, Tenancy Act had not been complied with by making the deposit required by sub-section 5 of that section. It was held in this case that right of appeal is a substantive right and cannot be affected by any amendment unless it appears that the legislation desires to do so either expressly or through necessary intendment.

3. The second case on which reliance has been placed is *H. K. Dada (India Ltd.) v. State of Madhya Pradesh*, ² In this case appellant assessee had submitted returns to the Sales Tax Officer, Akela. The Sales Officer on inspection of accounts book was not satisfied about his correctness and was of opinion that taxable turn over was Rs. 2,00,000/-. The Sales Tax Officer has submitted the case to the Assistant Commissioner. The Assistant Commissioner issued a notice and after hearing the assessee passed an order of assessment. As against this order the assessee preferred an appeal to the Sales Tax Commissioner Madhya Pradesh under section 22(1), Central Provinces and Berar Sales Tax Act, 1947. This appeal was not accompanied by a proof of payment of the tax in respect of which the appeal has been preferred. Ultimately the authority declined to admit the appeal. The assessee moved Board of Revenue Madhya Pradesh by a revision application against the order of Sales Tax Commissioner contending that his appeal was not governed by the provision of Section 22, sub-section (1) of the Act as amended after institution of the proceeding but was governed by the proviso to Section 21(2) of the Act as it stood when the proceedings were started. On these facts the Supreme Court had observed that the amendment of proviso has placed a substantial restriction on the assessee's right of appeal. It was held that imposition of such a restriction by amendment of this section cannot affect the assessee's right of appeal from a decision in a proceeding which commenced prior to such amendment where

right of appeal was free from such restriction under the section as it stood at the time of commencement of the proceeding.

4. The third case law on which reliance has been placed is *Garikapati Veeraya v. N. Subbiah Choudhary*,³ In this case suit had been filed before the Constitution of India had come into force. The valuation was above Rs. 10,000/- but below Rs. 20,000/-. At that time the appeal was maintainable to Federal Courts if the valuation of suit was above Rs. 10,000/-. By subsequent changes in law the Federal Courts had been abolished and the Constitution of India came into force. The valuation necessary for appeal to Supreme Court was raised to Rs. 20,000/-. On these facts the majority judgment was that the right of appeal is not a mere matter of procedure but it is a substantive right. The institution of suit carries with it by implication, that all rights of appeal then in force are preserved to the parties thereto till rest of the career of the suit. The observation of majority are formulated in paragraph 23 of the judgment and reads as under :-

- (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
- (ii) The right of appeal is not a mere matter of procedure but is a substantive right.
- (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
- (iv) The right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
- (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

5. This was a very special case in which the provision of Article 132 of the Constitution of India was interpreted. The Supreme Court had interpreted the Article 134 (2 of the Act) which provided for the removal of all suits, appeals and proceedings civil or criminal pending in Federal Court at commencement of the Constitution to the Supreme Court and invested the Supreme Court with jurisdiction to hear and determine the same. After discussing a catena of the cases of various High Courts the Supreme Court had come to the conclusions that as the Supreme Court had substituted the Federal Court the appeal would lie to it even the valuation of the appeal was below 20,000/-. The right of appeal vested in the appellant as on the date of suit was upheld.

6. The last case law relied upon is *State of Bombay v. Supreme General Films Exchange Ltd.*,⁴ In this case the suit was filed prior to 1-4-1954. On this date the Court-fees Act (Bombay Amendment Act, 1954) had come into force leaving enhanced Court-fee. Appellant had paid the enhanced Court-fee according to this amended Act. After termination of the appeal the appellant had prayed for refund of the Court-fee. It was observed by the Hon'ble Supreme Court that the enhancement of Court-fee placed a burden and restriction on the appellant. His right of appeal was to be governed by the unamended provision and directed the refund of the Court-fee.

7. In all above cases the general proposition is that an amending Act cannot impair the right of appeal until the amendment provision makes an express provision or by necessary intendment makes the provision applicable to the present proceeding.

8. All the case laws except that of AIR 1957 Supreme Court 540 were relating to the provision where amendment has been made in the section conferring right of appeal to a suitor. In the present case the old Act has been completely scrapped from the Statute Book and a new Act has come into force before the appeal has been filed in this Court. Hence the question arises that whether the appeal would be governed by the Act which is no longer on the statute book.

9. We have examined in extenso the provisions of Section 217 of the new Act. However, sub-section (4) of Section 217 needs attention. It reads as under:-

(4) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

10. The above clause has to be read with Section 6 of the General Clause Act. The relevant portion of the Section 6 of the General Clauses Act reads as under:-

"Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not a-

(a) to (d)

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

11-12. Reading of Section 217 of the new Act and Section 6 of the General Clause Act leaves no iota of doubt that the legal proceeding instituted before repeal are to be continued or enforced as if the repealing Act had not been passed at all. It is significant to note that Section 6 of the General Clauses Act would apply only when a difference of opinion does not appear. We have gone through the various provisions of the new Act and we do not find that the Parliament ever intended that all the proceedings which had been initiated prior to the new enactment would be governed by the new Act and not by the repealed Act.

It would be of some significance here to take notice of the following observations made by the Supreme Court in *Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh*, (at p. 224)⁵

"The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old

law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right."

We have already observed earlier that the right of appeal under the old Act was a substantive right and have along with it the old law must also govern the exercise and enforcement of that right of appeal. A citizen cannot be deprived of his substantive right guaranteed to him unless it is taken away either expressly or by necessary intendment. Unfortunately we do not find any thing in the new Act which takes away the right of appeal of a claimant under the old Act and with it the mode of exercise of that right of appeal. The settled law appears to be that right of appeal also vests in the person who brings a proceeding or against whom the proceeding has been brought a further right to enforce it according to the then existing law which would be deemed to continue to this limited extent.

13. We had opined that introduction of Section 173 of the new Act was a social legislation and, therefore, it will apply to the proceedings started before coming into operation of the new Act. This cannot be a guideline to overthrow the settled principle of law which is being followed for more than half a century and even upto this date. Under the old Act there were no requirements of deposit by the person preferring an appeal in the High Court. The requirement of deposit of 50% of the awarded amount or Rs. 25,000/- whichever is less is certainly a burden on the appellant. It is a bar to his right of appeal. Such a fetter cannot be imposed on the appellant in cases arising out of the old Act.

14. We have expressed this opinion but we must for the sake of mention record that we did not have the advantage of hearing the other side of the story as this question is being decided at the preliminary stage.

15. It would not be out of place for us to express our appreciation for the candid manner in which Sri Saran placed the relevant law on the point and assisted us in arriving at this conclusion.

16. For the foregoing reasons, in our opinion, the application for review

deserves to be allowed and order dated 4th August, 1989 is reviewed to the extent that the sentence in the penultimate paragraph "and must comply the conditions such as are laid down in that Section", and the last paragraph should be deleted and we would substitute the last paragraph as under :

"We, therefore, hold that an appeal from a proceeding initiated under Section 110-A of the Motor Vehicles Act, 1939 would be maintainable under Section 173 of Act 59 of 1988 and that the provisions of the old Act would continue to apply to all appeals which arise from proceedings initiated prior to the date of the enforcement of the said Act."

Orders accordingly.

Review allowed.

Cases Referred.

1. AIR 1931 Cal 100
2. AIR 1953 SC 221
3. AIR 1957 SC 540
4. AIR 1960 SC 980
5. AIR 1953 SC 221