Shankar Ramchandra Abhyankar vs Krishnaji Dattatreya Bapat on 16 April, 1969

Equivalent citations: AIR1970SC1, (1970)72BOMLR179, (1969)2SCC74, [1970]1SCR322, AIR 1970 SUPREME COURT 1, 1970 RENCR 311, 1970 (1) SCR 322, 1970 (1) ITJ 1, 1970 MAH LJ 269, 1970 MPLJ 127, 1970 SCD 37, 1972 BOM LR 179

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Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

A.N. Grover, J.

1. This is an appeal by special leave from a judgment of the division bench of the Bombay High Court. The only question for decision is whether the High Court could interfere under Articles 226 & 227 of the Constitution with the order of the appellate court in proceedings under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter called the "Act", when a petition for revision under Section 115, Civil Procedure Code, against the same order had been previously dismissed by a single Judge of that court.

2. The appellant is the owner of a house in Poona. The respondent, who was a teacher, was the tenant of a block of four rooms on the first floor of the house. In 1958 he was transferred to another town Wai where he was allotted suitable residential accommodation. His son, however, stayed on in Poona as he was studying there. The appellant filed a suit in the court of Judge, Small Causes, under the provisions of the Act for possession of the suit premises, inter alia, on the ground that the respondent had acquired suitable accommodation elsewhere. The position taken up by the respondent was that his son was required to stay on in Poona and for that reason it could not said that the had acquired suitable residence at Wai. Moreover he had gone away from Poona only temporarily and on his return the premises would be required for his own use. The trial court held that only a part of the premises which were required by the son should be vacated. It granted a decree for possession of two out of four rooms and directed proportionate reduction of the rent. Both sides filed appeals in the court of the District Judge. The Extra Assistant Judge who disposed them of was of the view that the court was not empowered to bifurcate the premises. It was either suitable for the whole family or it was not suitable. But he affirmed the decree on the ground that the order of the trial court was an equitable one. The respondent preferred a petition for revision

under Section 115 of the CPC before the High Court. A learned Single Judge who heard the petition dismissed it as he was not satisfied that the appellate court had acted in exercise of its jurisdiction illegally or with material irregularity. The respondent moved a petition under Articles 226 and 227 of the Constitution challenging the same order of the appellate court. Following a decision of a full bench in K.B. Sipahimalani v. Fidahussein Vallibhoy 58 B.L.P. 344 the division bench which heard the writ petition held that in spite of the dismissal of the petition by the learned Single Judge there could be interference under Articles 226 and 227 of the Constitution on a proper case being made out. After going into the merits the bench expressed the view that the respondent had not acquired an alternative suitable residence. The courts below were therefore, wrong in coming to the contrary conclusion. As Section 13(1)(1) of the Act had been misconstrued and the error was apparent on the record the orders of the courts below were set aside.

3. Now as is well known Section 115 of the Civil Procedure Code empowers the High Court to call for the record of any case which has been decided by any court subordinate to it and in which no appeal lies to it. It can interfer if the subordinate court appears to have exercised the jurisdiction not vested in it by law or to have failed to exercise the jurisdiction so vested or to have acted in the exercise of its jurisdiction legally or with material illegality. The limits of the jurisdiction of the High Court under this section are well defined by a long course of judicial decisions. If the revisional jurisdiction is invoked and both parties are heard and an order is made the question is whether the orders of the subordinate court has become merged in the order of the High Court. If it has got merged and the order is only of the High Court, the order of the subordinate court cannot be challenged or attacked by another set of proceedings in the High Court, namely, by means of a petition under Article 226 or 227 of the Constitution. It is only if by dismissal of the revision petition the order of the subordinate court has not become merged in that of the High Court that it may be open to party to invoke the extraordinary writ jurisdiction of that court. There again the question will arise whether it would be right and proper for the High Court to interfere with an order of a subordinate court in a writ petition when a petition for revision under Section 115, C.P.C., against the same order has been dismissed. Such a consideration will also enter into the exercise of discretion in a petition under Article 225 or 227.

4. The Bombay High Court in K.B. Sipahimalani's 58 B.L.R. 344 case made a distinction between an appellate jurisdiction and a revisional jurisdiction. A right of appeal is a vested right and an appeal is a continuation or a rehearing of the suit. A revision, however, is not a continuation or a rehearing of the suit; nor is it obligatory upon the revisional court to interfere with the order even though the order may be improper or illegal. If the revisional court interferes the order of the lower court does not merge in the order passed by a revisional court but the order of the revisional court simply sets aside or modifies the order of the lower court. It was this argument which mainly prevailed before the Bombay bench. It would appear that this Court has taken a view which runs counter to that of the Bombay High Court. Although the case of Madan Lal Rungta v. Secy. to the Government of Orissa [1962] 3 Supp. S.C.R. 906 was not one which had been decided under Section 115 of the Civil Procedure Code but the ratio of that decision is apposite. The State Government of Orissa had rejected the application of the appellant there who had applied for grant of a mineral lease. He made an application for review to the Central Government under Rule 57 of the Mineral Concession Rules which was rejected. He moved the High Court under Article 226 of the Constitution which was also

dismissed. The appellant came up by special leave to this Court. His main contention was that the Central Government had merely dismissed the review petition and the effective order rejecting his application for the mining lease was that of the State Government. The High Court, thus, had jurisdiction to grant a writ under Article 226. This contention was negatived and it was held that the High Court was right in taking the view that it had no jurisdiction to issue a writ as the final order was that of the Central Government which was not within its territorial jurisdiction. The ratio of this decision is that it was the order of the Central Government dismissing the review petition which was the final order into which the order of the State Government had merged.

5. It would appear that their lordships of the Privy Council regarded the revisional jurisdiction to be a part and parcel of the appellate jurisdiction of the High Court. This is what was said in Nagendra Nath Dey v. Suresh Chandra Dey 59 I.A. 283, 287.

There is no definition of appeal in the CPC, but their Lordship have no doubt that any application by a party to an Appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term....

Similarly in Raja of Ramnad v. Kamid Rowthen and Ors. 53 I.A. 74. a civil revision petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes nature. A full bench of the Madras High Court in P.P.P. Chidambara Nadar v. C.P.A. Rama Nadar and Ors. A.I.R. 1937 Mad. 385 had to decide whether with reference to Article 182(2) of the Limitation Act, 1908 the term "appeal" was used in a restrictive sense so as to exclude revision petitions and the expression "appellate court" was to be confined to a court exercising appellate, as opposed to, revisional powers. After an exhaustive examination of the case law including the decisions of the Privy Council mentioned above the full bench expressed the view that Article 182(2) applied to civil revisions as well and not only to appeals in the narrow sense of that term as used in the Civil Procedure Code. In Secretary of State for India in Council v. British India Steam Navigation Company 13 C.L.J. 90. and order passed by the High Court in exercise of its revisional jurisdiction under Section 115, CPC, was held to be an order made or passed in appeal within the meaning of Section 39 of the Letters Patent, Mookerji, J., who delivered the judgment of the division bench referred to the observations of Lord Westbury in Attorney General v. Sillem [1864] 10 H.L.C. 704 and of Subramania Ayyar, J. in Chappan v. Moidin [1898] I.L.R. Mad. 68, 80. on the true nature of the right of appeal. Such a right was one of entering a superior Court and invoking its aid and interposition to redress the error of the court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. In the well known work of Story on Constitution (of United States) vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the legislature may choose to prescribe. According to Article 1762 the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial. A writ of error is a process of common law origin, and it

removes nothing for re-examination but the law. The former mode is usually adopted in cases of equity and admiralty jurisdiction; the latter, in suits at common law tried by a jury.

6. 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 CPC circumscribes the limits 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 High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior Courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal.

7. It may be useful to refer to certain other decisions which by analogy can be of some assistance in deciding the point before us. In U.J.S. Chopra v. State of Bombay the principal of merger was considered with reference to Section 439 of the Criminal Procedure Code which confers revisional jurisdiction on the High Court. In the majority judgment it was held, inter alia, that a judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing,in the presence of both the parties would replace the judgment of the lower court thus constituting the judgment of the High. Court-the only final judgment to be executed in accordance with law by the court below. In Chandi Prasad Chokhani v. The State of Bihar it was said that save in exceptional and special circumstances this Court would not exercise its power under Article 136 in such a way as to bypass the High Court and ignore the latter's decision which had become final and binding by entertaining an appeal directly from orders of a Tribunal. Such exercise of power would be particularly inadvisable in a case where the result might lead to a conflict of decisions of two courts of competent jurisdiction. In our opinion the course which was followed by the High Court, in the present case, is certainly one which leads to a conflict of decisions of the same court.

8. Even on the assumption that the order of the appellate court had not merged in the order of the single Judge who had disposed of the revision petition we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the CPC. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions.

9. In the result the appeal is allowed and the judgment of the division bench of the High Court is hereby set aside. The appellant shall be entitled to costs in this Court.