Vishnu Awatar Etc vs Shiv Autar And Ors on 2 May, 1980

Equivalent citations: 1980 AIR 1575, 1980 SCR (3) 973, AIR 1980 SUPREME COURT 1575, 1980 ALL. L. J. 751, (1980) 3 MAH LR 300, 1980 UJ (SC) 619, (1980) ALL WC 346, (1980) 6 ALL LR 354, 1980 (4) SCC 81, (1980) ALL RENTCAS 461

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, O. Chinnappa Reddy

PETITIONER:
VISHNU AWATAR ETC.

Vs.

RESPONDENT:
SHIV AUTAR AND ORS.

DATE OF JUDGMENT02/05/1980

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 1575 1980 SCR (3) 973
1980 SCC (4) 81

ACT:
Code of Civil Procedure, 1908, Section 115-Revisory jurisdiction of the High Court-Section 3 of the Code of Civil Procedure (U.P.) Act, 1978 forbidding a revision under Section 115 of the C.P.C. to the High Court from a judgment or order in appeal by the District Court where the suit out of which the case arises is not one of the value of Rs. 20,000/- and above-Import and impact of Section 3 of the U.P. Amendment Act, 1978-Article 136 of the Constitution Supreme Court's power to interfere.
Dismissing the special leave petitions, the Court

HEADNOTE:
HELD: 1. Ordinarily when a State Legislation is being interpreted the meaning received by it in the High Court as

the settled intent should rarely be disturbed by the Supreme Court unless the error is so egregious, the impact goes beyond the State or like legislation elsewhere and decisions of the High Courts thereon may lead to confusion and uncertainty. [979 A-B]

2. Viewing the text of Section 3, lexically literally, schematically, and in the setting of social justice of which saving the average litigant from the intoxication of tantalising litigation is component, "No revision to the High Court" would be the only conclusion. Purposively speaking, it will be stultifying to interpret, section 3 to mean that orders in appeal by District Courts must suffer a distant journey to revisory justice from the High Court. [980 C-D]

Vishesh Kumar v. Shanti Prasad, [1980] 3 S.C.R. 32 clarified.

3. The short test to refuse revisory jurisdiction to the High Court is to ascertain whether the decision sought to be challenged is in a case arising out of a suit of the valuation of Rs. 20,000/- and more. If the answer is 'Yes' then the High Court has revisory power, but if the suit from which the case arises and in which the decision is made is one where the valuation is less than Rs. 20,000/- then the litigation cannot travel beyond the District Court except in that class of cases where the decision is taken for the first time by the District Court itself in a case arising out of an original proceeding. From this angle, none of the Special Leave Petitions survive. [980 D-F]

After all, our District Courts are easier of access for litigants, and the High Courts, especially in large States like Uttar Pradesh, are 'untouchable' and 'unapproachable' for agrestic populations and even urban middle classes. Nor is there ground to distrust the District Judges. A hierarchy of courts built upon a heritage of disbelief in inferiors has an imperial flavour. If we suspect a Munsif and put a District Judge over him for everything he does, if we distrust a district Judge and vest the High Court with pervasive supervision, if we be skeptical about the High Courts and watch meticulously over all their orders, the System will break down as its morale will crack up. A psychic communicable disease of suspicion, skepticism and servility cannot make for the health of the
974
judicial system. If the Supreme Court has a super-Supreme Court above it, it is doubtful whether many of its verdicts will survive, judging by the frequency with which it differs from itself. [979 E-G]

Observation

Democracy, in a vast country of diversity, demographic immensity, logistic difficulty and large-scale indigency, makes decentralisation an imperative of Administration. Access to Justice also implies early finality within reach of the rich and the poor. These considerations persuaded the

U.P. State, one of direst in poverty, largest in population, and most agrestic in life-style, to attempt a tepid procedural reform in the field of revision to the High Court in litigations of lesser financial stakes. Judicial reform is upto now a tinkering exercise, not an engineering project but even that little tinkering is fiercely challenged as litigative anathema by the profession which is unfortunate. [980 G-H, 981 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) Nos. 9945, 10550, 8857 of 1979.

From the Judgments and Orders dated 23-7-1979, 25-9- 1979 and 18-7-1979 of the Allahabad High Court in Civil Revision Nos. 3832/ 78, 2042/79 & 264/76.

Manoj Swarup for the Petitioner in SLP Nos. 9945 & 8857.

Pramod Swarup for the Petitioners in SLP No. 10550. N. N. Sharma for the Respondent No. 1 in SLP No. 9945. A. K. Srivastava for Respondents Nos. 1-2 in SLP No. 10550.

Mohan Behari Lal for Respondent Nos. 1 in SLP No. 8857. The Order of the Court was delivered by KRISHNA IYER, J. These petitions for special leave deserve to be dismissed because the Full Bench judgment of the Allahabad High Court which is challenged in all the three has been rightly decided in our view. Even so, a speaking order has become necessary because, as rightly pointed out by counsel, the earlier decision of this Court in Vishesh Kumar v. Shanti Prasad does not specifically cover the precise point that has been raised before us by counsel for the petitioner. We are concerned with the ambit and impact of s. 3 of the Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978 (for short, the Act), which forbids a revision under s. 115 of the Civil Procedure Code (acronymically, the C.P.C.) to the High Court from a judgment or order in appeal by the District Court where the suit out of which the case arises is not one of the value of Rs. 20,000/- and above.

We have, in Vishesh Kumar v. Shanti Prasad (supra) considered the scheme, setting and purpose of the U.P. Amendment to the Civil Procedure Code bearing on the revisory power of the High Court under s. 115 C.P.C. We may quote:

> A schematic analysis of the judicial hierarchy within a State indicates that the High Court, as the apex court in the hierarchy, has been entrusted, not only with the supreme appellate power exercised within the State but also, by virtue of s. 115, the power to remove, in order to prevent a miscarriage of justice, any jurisdictional error committed by a subordinate court in those cases where the error cannot be corrected by resort to its appellate jurisdiction. The two salient features of revisional jurisdiction under s. 115 are, on the one hand, the closely limited grounds on which

> the court is permitted to interfere and on the other, the wide expanse of discretion available to the court, when it decides to interfere, in making an appropriate order. The intent is that so serious an error as one of jurisdiction, if committed by a subordinate court, should not remain uncorrected, and should be removed and record healed of the infirmity by an order shaped to reinstate the proceeding within the proper jurisdictional confines of the subordinate court.
>
> xx xx xx From its inception there was increasing resort to the revisional jurisdiction of the High Court under s.
>
> 115. Over the years the volume of litigation reached an insupportable point in the pending docket of the Court.

To alleviate the burden, a pattern of decentralisation of revisional power was adopted and s. 115 was amended by successive State amendments, each attempting to close the gap left by its predecessors.

Many times, amendments were made by the U.P. Legislature to effectuate its determined purpose of dichotomising and decentralising the revisional jurisdiction, a goal which is laudable and which other States may well regard as a paradigm.

The crucial provision, s. 3 of the Act, reads thus:

> 115. The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before Aug. 1, 1978 and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, 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, as the case may be, may make such order in the case as it thinks fit.

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section.

Provided further that the High Court or the District Court shall not under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceeding, except where,-

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(Explanation)-In this section, the expression 'any case which has been decided' includes any other deciding an issue in the course of a suit or other proceeding.

The bulk of the cases we disposed of in the earlier round turned on the tenability of a revision upon a revision-a product of legal ingenuity by which the attempt of the legislature to save the little litigant from the logistics of justice from the distant High Court by confining lesser revisions to the District Court was metamorphosed into a dual revision, one at the District Court level and the other at the High Court against the District Court's order in revision. Value-free legalistics can be counter-productive acrobatics ! When that happened the Legislature stepped in again and again and we are concerned with the import and impact of s. 3 of the Act vis a vis appellate orders of District Courts where the suits from which they stem are less than Rs. 20,000/- in value. A brief analysis of that provision is contained in Vishesh Kumar (supra):

> "4. From 1st August, 1978:
>
> Finally, s. 3, Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978, which was deemed to have come into force on 1st August, 1978, amended s.115 again and restored the bifurcation of revisional jurisdiction between the High Court and the District Court.
>
> Accordingly now:
>
> (i) The High Court alone had jurisdiction under s.115 in cases arising out of original suits or other proceedings of the value of Rs. 20,000 and above, including such suits or other proceedings instituted before 1st August, 1978;
>
> (ii) The District Court alone has jurisdiction under s.115 in any other case, including a case arising out of an original suits or other proceedings instituted before 1st August, 1978;
>
> (iii)The High Court has jurisdiction under s.115 in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court;
>
> (iv) A revision proceeding pending immediately before 1st August, 1978 of the nature in which a District Court could exercise revisional power under s.115 as amended by

> the Amendment Act, 1978 if pending;
>
> (a) in the District Court, would be decided by that court as if the Amendment Act of 1978 were in force at all material times;
>
> (b) in the High Court, would be decided by the High Court as if the Amendment Act of 1978 had not come into force.

The provision now before us is slightly different although the purpose and the result are the same. The scheme is clear. The High Court has revisory power only in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above including such suits or other proceedings instituted before Aug.1, 1978. The entire residuary area belongs to the District Court. An-

other test of revisional jurisdiction for the High Court is to see whether the first proviso applies:

> Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section. The High Court, in the last Full Bench decision traced the story of the race between the legislature and judicial interpretation and summed up the result rightly thus :
>
> "The High Court was confined to cases arising out of original suits or other proceedings of the value of Rupees 20,000/- or above, including such suits or other proceedings instituted before 1st August, 1978. The jurisdiction of the District Court was in respect of any other case including a case arising out of an appeal suit or other proceeding instituted before such date. The legislature has continued to use the phrase "cases arising out of original suits". The interpretation placed upon this phrase by the Full Bench in Har Prasad Singh's case (AIR 1973 All. 390) will apply. The revisional jurisdiction would hence not extend to cases arising out of the disposal of appeals or revisions by the District Court. The proviso is also in the same terms as the proviso added in 1973 namely, it uses the phrase cases arising out of original suits or other proceedings". As already seen, it will not cover cases arising out of disposal of appeals or revisions.
>
> The words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added in order to bring within the purview of the revisional jurisdiction orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings" have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions.

> The phrase "in any other case" used with reference to the District Court will refer to cases arising out of original suits of the value of less than Rs. 20,000/- and also cases arising out of other proceedings of an original nature of a valuation below Rs. 20,000/-".

Ordinarily when a State legislation is being interpreted the meaning received by it in the High Court as the settled intent should rarely be disturbed by this Court unless the error is so egregious, the impact goes beyond the State or like legislation elsewhere and decisions of the High Courts thereon may lead to confusion and uncertainty. Here no such consideration arises and the reasoning of the High Court strikes us as sound.

The residuary power is with the District Court. The High Court has no revisional power under s. 115 unless the case arises out of an original suit or other proceeding i.e. other original proceeding decided by the District Court or where the case arises from a suit of and above Rs. 20,000/- in value. If the District Court has decided, not in its original jurisdiction, then the case, be it a revisional or appellate order, is not amenable to the High Court's revisional jurisdiction. Of course, if the case arises out of suits or other proceeding of the value of Rs. 20,000/- and above, the High Court has revisory power. All other cases fall outside and become final at the District Court level.

After all, our District Courts are easier of access for litigants, and the High Courts, especially in large States like Uttar Pradesh, are 'untouchable' and 'unapproachable' for agrestic populations and even urban middle classes. Nor is there ground to distrust the District Judges. A hierarchy of courts built upon a heritage of disbelief in inferiors has an imperial flavour. If we suspect a Munsif and put a District Judge over him for every thing he does, if we distrust a District Judge and vest the High Court with pervasive supervision, if we be skeptical about the High Courts and watch meticulously over all their orders, the System will break down as its morale will crack up. A psychic communicable disease of suspicion, skepticism and servility cannot make for the health of the judicial system. If the Supreme Court has a super-Supreme Court above it, who knows how many of its verdicts will survive, judging by the frequency with which it differs from itself.

Schematically, we are satisfied, that decisions of District Courts rendered in appeal or revision are beyond revision by the High Court, if the suit is of less than Rs. 20,000/-. But an exception has been engrafted by the first proviso to s.3 to the effect that where an origi-

nal decision has been made by a District Court the High Court's appellate or revisional power will come into play. That is at as it should be, for one appeal or revision is almost universal. But otherwise, the District Court's decision is immune to revisional probe by the High Court.

Lexically, there is no escape from s. 3 because the whole residue, except where the High Court has been expressly vested with revisory power, is beyond reach under s. 115 C.P.C.

Precedentially, the result is no different as the Full Bench of the High Court has been at pains to make out. Purposively speaking, it will be stultifying to interpret s. 3 to mean that orders in appeal by District Courts must suffer a distant journey to revisory justice from the High Court. Thus we

reach the convergent conclusion of "no revision to the High Court", viewing the text of s. 3, lexically, literally, schematically, and in the setting of social justice of which saving the average litigant from the intoxication of tantalising litigation is a component.

The short test to refuse revisory jurisdiction to the High Court is to ascertain whether the decision sought to be challenged is in a case arising out of a suit of the valuation of Rs. 20,000/- and more. If the answer is 'yes' then the High Court has revisory power, but if the suit from which the case arises and in which the decision is made is one where the valuation is less than Rs. 20,000/- then the litigation cannot travel beyond the District Court except in that class of cases where the decision is taken for the first time by the District Court itself in a case arising out of an original proceeding. From this angle none of the Special Leave Petitions survive. Special Leave Petition No. 9945 of 1979 is a case where the District Judge disposed of an appeal and the revision to the High Court was directed against the appellate order. The subject-matter of the suit being below Rs. 20,000/- in valuation, the High Court was right in refusing to exercise any revisional power. Special Leave Petition No. 10550 of 1979 falls in the same category and must be dismissed. The result in Special Leave Petition No. 8857 of 1979 is equally fatal and for the same lethal reason.

Before we part with the case, we may make a general observation in the hope that it may have value as legislative guidance. Democracy, in a vast country, of diversity, demographic immensity, logistic difficulty and large-scale indigency, makes decentralisation and imperative of Administration. Access to Justice also implies early finality within reach of the rich and the poor. These considerations per-

suaded the U.P. State, one of the direst in poverty, largest in population, and most agrestic in life-style, to attempt a tepid procedural reform in the field of revision to the High Court in litigations of lesser financial stakes. Judicial reform is upto now a tinkering exercise, not an engineering project but even that little tinkering is fiercely challenged as litigative anathema by the profession which is unfortunate.

S.R. Petitions dismissed.