

Madari Singh vs Bhajru And Ors. on 23 July, 1951

Equivalent citations: AIR1952ALL93, AIR 1952 ALLAHABAD 93

JUDGMENT

Harish Chandra, J.

1. This second appeal came up for hearing before my late brother Seth, J. on the 22nd January, 1951. He heard it and pronounced his judgment in open court. It was taken down in shorthand by a judgment clerk, but before the transcript of the judgment could be laid before His Lordship for "inspection, supervision and correction" under Rule 7 of Chapter VII of Rules of Court, he died on the 26th January, 1951, and the judgment could not be signed by him, as provided in Rule 8 of the same Chapter.

2. The point that has to be considered is whether the order pronounced by Seth, J. is a valid order or it is invalid and without effect so that the appeal should be re-heard and decided afresh.

3. In a criminal case in which judgment had been pronounced in open court by the said Judge on the same date, namely, January 22, 1951, but had not been signed, the matter came up for consideration before my brother Brij Mohan Lall, J. in 'State v. Saru Smelting and Refining Corporation Ltd', Meerut, 1951 All L Jour 432, and on a consideration of various cases that were cited before him, he came to the conclusion that the case had been completely and effectively disposed of by Seth, J. by his order dated January 22, 1951. One of the grounds upon which this decision was based was that in the Code of Criminal Procedure 1898 there is nothing requiring a Judge to affix his signature on a judgment. The position on the civil side is somewhat different. There is nothing in the various sections of the Code of Civil Procedure requiring a judgment to be signed by the Judge who pronounced it.

4. Section 33 merely lays down that "The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow."

In the first schedule to the Code, however, Rule 3 of Order 20, requires that the judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it. Rule 31, Order 41, which applies to judgments of the appellate Court also requires that at the time that the judgment is pronounced, it shall be signed and dated by the Judge or by the Judges concurring therein. The whole of Rule 31 is re-produced below:

"The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

5. Rule 2, Order 49, however runs as follows: "Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court." It would appear that according to this rule if there was any rule at the commencement of the Code of Civil Procedure with respect to the recording of judgments and orders by the High Court, that rule shall be followed, although it may be in conflict with the provisions of any rule contained in the schedule including of course Rule 3, Order 20, and Rule 31, Order 41.

6. The present Rules of this Court were framed in January 1898 and were, therefore, in existence at the time when the Code of Civil Procedure of 1908 came into force. Rule 5 of Chapter VII of these rules runs as follows :

"Every judgment delivered and every order passed by the Court shall be recorded. In a case in which the court delivers a written judgment, no further record of such judgment shall be necessary. In every other case the judgment delivered or order passed shall be recorded by a judgment clerk."

7. This Rule clearly permits the High Court to deliver a judgment orally in open court. When a judgment is delivered orally in this manner, the rule does not require that it shall be signed and dated immediately.

8. Rule 6 requires a judgment clerk to file the record of a judgment or order taken down by him with the paper-book of the case within one week from the date of the delivery of the judgment or order.

9. According to Rule 7, the judgment or order recorded by the judgment clerk has to be submitted "for inspection, supervision and correction" by the Judge or Judges who delivered it "unless such Judge or Judges shall have otherwise ordered, shall have resigned or proceeded on leave, or be absent on account of illness or any other cause."

10. According to Rule 8, when a judgment or order recorded by a judgment clerk has been signed by a Judge or Judges who delivered it. "after inspection, supervision and correction" the Bench Reader is required to seal it with the seal of the Court. It would thus be clear that according to this Rule when a judgment is delivered orally in Court, the Judge is not required to sign and date his judgment at the time when he pronounces it. There is no doubt a provision in Rule 8 for the signing

of such judgment after a transcript thereof has been prepared by the judgment clerk and has been laid before the Judge "for inspection, supervision and correction." But as we have seen Rule 7 requires that the transcript of the judgment prepared by the judgment clerk has to be laid before the Judge or Judges who delivered it for inspection, supervision and correction, "unless such Judge or Judges shall have otherwise ordered, shall have resigned or proceeded on leave, or be absent on account of illness or any other cause."

The Rule, therefore, contemplates a case in which a judgment pronounced by a Judge in open Court cannot be laid before him for inspection, supervision and correction and in such a case Rule 8 which contemplates that the Judge shall sign the judgment after inspection, supervision and correction would not apply. In my view, therefore, in the circumstances of the present case, the fact that Seth, J. was unable to sign the judgment which he pronounced orally in open court on the 22nd January, 1951 does not vitiate the judgment at all and that the appeal must be deemed to have been completely and effectively disposed of by his order dated January 22, 1951.

11. A reference to certain authorities, frankly cited before me by Shri Bhagwan Das Gupta on behalf of the appellant, would also lead to the same conclusion.

12. The first of these cases is 'Sundar Bibi v. Bisheshar Nath', 9 All 93. This is a case of the year 1888. Section 574 of the Code of Civil Procedure of 1882 (Act XIV of 1882) which was in force at the time corresponds almost exactly to Rule 31, Order 41 of the first schedule to the present Code.

13. Edge, C. J. observes that it was never intended that the provisions of Section 574 should be strictly complied with and that if the Court found that there had been a substantial compliance with those provisions there would be no cause for interference.

14. In another case 'Banarsi Das v. Sagar Mal', A. I. R. (16) 1929 All 403 a Bench of this Court held:

"Non-compliance with Rule 3, Ch. VII of the Rules, which requires that, when a written judgment is pronounced by one of the Judges it has to be signed by both judges, is merely an irregularity which does not affect the merits and Section 151, C. P. C. cannot, be invoked to ask to re-hear the case merely on account of such technical irregularity."

15. In the case of 'Durga Thathera v. Narain Thathera', A. I. R. (18) 1931 All 597 a Full Bench of this Court held that a strict compliance with the provisions of Rule 31, Order 41, was not necessary and that if it had been substantially complied with, the judgment would not be void and the irregularity could be ignored.

16. In the case of 'Firm, Gokal Chand Jagan, Nath v. Firm Nand Ram Das Atma Ram', A. I. R. (25) 1938 P. C. 292 their Lordships of the Judicial Committee considered the question whether the failure on the part of one of two Judges by whom, the judgment was delivered, to sign it rendered, the judgment void. At the time when the judgment was delivered, one of the Judges had gone on leave without signing the judgment and the judgment was signed by the other Judge and

pronounced by him. The question before the Privy Council was whether in view of the fact that the provisions of Rule 31, Order 41 of the Code had not been complied with the judgment was or was not invalid. They pointed out that the Rule does not show that if its requirements are not complied with, the judgment shall be a nullity. They observed:

"So startling a result would need clear and precise words. Indeed, the rule does not even state any definite time in which it is to be fulfilled. The time is left to be denned by what is reasonable. The rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court may have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity."

They further observed:

"Section 99 provides that no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. That section comes in the part dealing with appeals from original decrees. But Section 108 applies the -same provision to appeals from appellate decrees and it is always in the discretion of the Board to apply the principle on appeal to His Majesty in Council. In their Lordships' judgment the defect here was an irregularity not affecting the merits of the case or the jurisdiction of the Court, and is no ground for setting aside the decree."

17. I am, therefore, satisfied that even if Rule 31, Order 41, C.P.C., applies, the judgment delivered by Seth, J. on 22nd January, 1951, is a valid judgment which finally disposes of the present appeal, and nothing further remains to be done in this appeal.

18. A note shall be made at the bottom of the Judgment under the signature of the Registrar that Seth, J. was unable to sign the transcript of the judgment on account of his death on the 26th January, 1951. It shall then be sealed with the seal of the Court and a decree prepared in the ordinary way. A copy of this order will also be attached to the judgment.