

Mohammad Mehdi vs Husain Ali And Anr. on 18 August, 1953

Equivalent citations: AIR1954ALL209, AIR 1954 ALLAHABAD 209

ORDER

Randhir Singh, J.

1. This is an application in revision against an order of the District Judge, Lucknow, in appeal against an order of the Munsif, Haveli, Lucknow, allowing an application for amendment of a written statement in a suit which was pending before him.

2. It appears that a suit for rendition of ac-counts was instituted by the plaintiff-opposite party against the delendant-applicant in the Court of the Munsif North. It was alleged on behalf of the plaintiff that a sum of Rs. 10,000/- had been paid to the defendants towards establishing a mill which was to be run by them jointly. The defendants filed a written statement denying the receipt of Rs. 10,000/- from the plaintiff. Subsequently after a witness had been examined the defendants made an application for amendment of their written statement. This application for amendment was considered by the learned Munsif and was rejected. In rejecting the application for amendment, the learned Munsif also made certain observations about the conduct of the defendants. The defendants then moved the District Judge for transfer of the case from the file of the Munsif North to some other Court as the Munsif had expressed a certain opinion adverse to the (sic)endants (sic)his application for transfer was granted. The (sic)ned District Judge while granting the application for transfer of the case from the file of the Munsif North to Munsif Haveli also remarked that the observations made by the learned Munsif North to the effect that the defendants could in spite of the rejection of their application for amendment lead evidence to prove certain payments were incorrect. The defendants then made an application to the Munsif Haveli after the case had been transferred to him for a review of the order of his predecessor rejecting the application for amendment. This application for review was allowed by the Munsif Haveli and the amendments sought were incorporated in the written statement. The plaintiff aggrieved by this order of the Munsif went in appeal and the District Judge allowed the appeal. The defendants have now come up in revision against the order of the District Judge.

3. The first point which has been urged on behalf of the applicants is that the order passed by the Munsif Haveli allowing the amendment was an order passed under his inherent powers and not under O. 47, R. 1, C. P. C. A perusal of the application made by the defendants for review of the order passed by the Munsif dated 29-9-1951, clearly shows that the application was made under O. 47, R. 1, C. P. C. and the order allowing the review was also passed under O. 47, R. 1, C. P. C. No doubt the defendants had in their application for review mentioned Section 151, C. P. C. as an alternative section under which the application could be granted but the Munsif has nowhere in his order made any mention that the order which he passed was under Section 151 or under any other provision. It

would evidently mean that the order was passed under O. 47, R. 1, C. P. C. If the application for review was allowed, an appeal is provided for under O. 47, Rr. 4 and 7. It has been argued on behalf of the applicant that the Munsif Haveli allowed the application for review as there was an error apparent on the face of the record. I am unable to agree with this contention. An error apparent on the face of the record would only be an error which can be detected without looking into the evidence or other matters. In the present case, the original order of the Munsif North rejecting the application for amendment was clear. He held that the defendants had no right to make an application for amendment at the stage at which it was made and he rejected the application. It was only towards the end of his order that he made an observation that although the amendment was being disallowed, the defendants could still lead evidence to prove certain payments. This observation would not nullify the effect of his previous order rejecting the application and it would be difficult to argue that this subsequent observation meant that the Munsif wanted to allow the application, it would, therefore, mean that the review of the order passed by the Munsif North was not sought on the ground that there was an error apparent on the face of the record, or in any event it was not granted on this ground. The Munsif allowed the application for review as he thought there was sufficient cause. The plaintiff was, therefore, entitled to go in appeal against this order. Besides the ground of the incorrectness of the order it was also pleaded on behalf of the plaintiff that the application for review had not been made within limitation. This point was raised by him in the Court of the Munsif Haveli as also before the District Judge. It is, therefore, clear that the appeal against this order of the Munsif was rightly filed before the District Judge.

4. The grounds on which an application for revision under Section 115, C. P. C. can be maintained have been set out and discussed in a recent ruling of the Privy Council in -- 'N. S. Venkatagiri Ayyangar v. The Hindu Religious Endowments Board, Madras', AIR 1949 PC 156 (A). It has been held that an applicant in revision cannot challenge the correctness of the findings of a Court. It is only if it is found that the Court has exercised a jurisdiction not vested in it or has failed to exercise a jurisdiction vested in it or where there has been an error of procedure that the order can be revised under Section 115, C. P. C. Even if the judgment of a Court is erroneous on questions of fact or law and no appeal is provided, this circumstance will not justify or permit an application for revision under Section 115, C. P. C.

5. Learned counsel for the applicant has not been able to make out any ground on which an application under Section 115, C. P. C. can be maintained. The District Judge was competent to hear the appeal and it is not open to this Court to examine the merits of the judgment on facts or law. The application for revision has, therefore, no force and is dismissed with costs to the opposite party.