# Beni Madho Prasad Singh vs Adit And Ors. on 24 September, 1952

## Equivalent citations: AIR1953ALL416, AIR 1953 ALLAHABAD 416

JUDGMENT

Walli Ullah, J.

1. This appeal was heard by a Bench of two learned Judges of this Court, Sinha and Wanchoo JJ., on 10-11-1947. At the close of the hearing, judgment was dictated in open Court by the learaed Judges. In the result, the appeal was allowed, the decrees of the courts below were set aside and the claim of the plaintiff-appellant was decreed with costs. Before the transcript of the judgment was signed by the learned Judges, it appears that the case was 'mentioned' to the learned Judges with the result that the transcript was not signed by either of the two learned Judges. On the contrary, at appears that at the stage of signing the transcript either one or both the learned Judges felt the necessity of having some points further clarified by further arguments from counsel. Thus on 9-12-1947, as the "order sheet" shows, some arguments were heard but they were not finished, and it was ord Ted that the case might be listed again after a week for further arguments. After this stage, it appears the case was never listed agai b fore the learned Judges concerned. Meanwhile various other proceedings such as applications for substitution of names on account of successive deaths of various respondents were held and quite a lot of time appears to have been taken up by these proceedings. In this interval both the learned Judges ceased to be Judges of this Court. The appeal has now been listed before us for hearing and final disposal.

2. Mr. Johari, the learned counsel for the appellant, has contended that, as a result of what happened on 10-11-1947, the appeal must be deemed to have been heard and finally disposed of, There is, therefore, according to the argument of the learned counsel, appeal to be heard and disposed of by this Bench. Mr. Verma, the learned counsel for the respon-dents, on the other hand, has contended that the transcript of the judgment, which was dictated orally in Court at the close of the hearing of the appeal on 10-11-1947, was never approved of, or signed, by the learned Judges who heard the case. The argument of the learned coun-sel is that, according to law, a judgment of the High Court in a 'civil case' like the present, is rot complete until it is signed by the learned Judges who hear the case. It is contended, therefore, that the present appeal cannot be considered to have been decided by this Court. Learned counsel, in the course of their arguments, brought to our notice, quite a number of rulings of various Courts in India including our own. We shall examine the relevant rulings a little later. Here it may be stated at once that most of the rulings cited by learned counsel are rulings given in criminal cases. The provisions contained in the Code of Civil Procedure are very different from those contained in the Code of Criminal Procedure. It is, therefore, clear that

rulings given in criminal cases are not of much use and do not give any direct help in deciding the question when it arises in connection with a civil case. We shall now proceed to consider the more important rulings to which our attention has been invited.

3. Learned counsel for the appellant has placed strong reliance upon the decision given in the case of --'Pragmadho Singh v. Emperor', AIR 1933 All 40 (A) decided by Sulaiman, C. J. What happened in that case was this : Certain criminal cases were heard and judgments in them were dictated in open court by a learned Judge of this Court, Mr. Justice L. M. Banerji. The judgments were taken down by the judgment-writer, but the transcript remained unsigned owing to the death of the Learned Judge. After the death of the learned Judge the office brought this fact to the notice of the Chief Justice for directions. The learned Chief Justice considered the question with reference to the provisions contained in the Code of Criminal Procedure. It was held : "There is no provision which requires that the High Court, after pronouncing a judgment in open court, should date and sign the same. The criminal appeals disp sed of by a Judge of the High Court by the delivery ot judgment in open court and taken down by his Judgment Writer must be deemed to have been finally disposed of by him; the omission to initial the fair copy of the judgment is in no way a serious defect." (4) The next case of this Court which has been cited by learned counsel before us is that of --'Saru-Smelting and Refining Corporation Ltd. Meerut v. State', AIR 1951 All 709 (B), decided by a learned single Judge of this Court, Brij Mohan Lall, J. It appears that a criminal revision was filed in this Court which came on for hearing before a learned Judge of this Court, Seth J. It was heard and eventually dismissed by his order dated 14-9-1950. Sometime after the dismissal of the revision, learned counsel made an application under Section 561 A, Cr. P. C., by which it was prayed that the order dated 14-9-1950, be reviewed. This application was put up before the same learned Judge. He heard arguments and at the close of the hearing dictated a judgment in open court on 22-1-1951, rejecting the application. Before, however, the transcript of the judgment could be placed before the learned Judge for signature, he died. Thereupon by an office report, the matter came up for consideration. After discussing quite a large number of rulings, including several decisions of this Court, and, in particular, after referring to the decision given by Sulaiman, C. J., in the case of AIR 1933 All 40 (A) ('ubi supra') the learned Judge reached this conclusion :

> "Though a judgment dictated in open court can be altered by a Judge before it is signed, nevertheless it cannot be said that such a judgment is not valid until signed. Further, it is the Judge concerned alone who can review and alter such a judgment."

It would be observed that in both these cases it has been made clear that there is no provision anywhere in the Code of Criminal Procedure to the effect that judgments delivered by the High Court, in its criminal appellate jurisdiction, have to be dated and signed in the manner stated in Section 367, Cr. P. C.

5. Learned counsel for the appellant has also referred us to the cases of --'Queen Empress v. Lalit Tiwari', 21 All 177 (C); --'Emperor v. Kallu', 27 All 92 (D) and --'Emperor v. Gobind Sahai', AIR 1916 All 183(E). It is not necessary to consider these cases in detail. Suffice it to say that they are all criminal cases. What was laid down there was only this that the judgment of the High Court is not complete until it is sealed; and that it may be altered by the same Judge.

6. Turning to cases decided by other High Courts, we may refer to the case of --'State of Bombay v. Geoffrey Manners & Co. (No. 2)', AIR 1951 Bom 49(F), decided by a Division Bench of the Bombay High Court consisting of Rajadhyaksha and Chainani JJ. It was a Criminal case. It was held that there was no provision anywhere in the Criminal P. C. to the effect that judgments delivered by the High Court in its Criminal appellate jurisdiction must be dated and signed. Further it was held :

> "When an oral judgment is delivered by the High Court, in its criminal appellate jurisdiction, the order made receives its finality when it is recorded and a writ in terms of the order is issued under the seal of the Court. The recording of the order and issuing of a writ in terms thereof under the seal of the Court, invest that order with finality which cannot thereafter be altered or reviewed."

Next, we may refer to the case of --(Amo-dini Dasee v. Darsan Ghose', 38 Cal 828 (G), decided fay a Division Bench of the Calcutta High Court. It was a 'criminal' revision by which review of a judgment discharging a rule before signature was sought. After considering the case law including the decision of this Court in the case of 21 All 177(C) (ubi supra), the learned Judges held :

> "It is competent to a Division Bench of the High Court, which has erroneously discharged a rule on a point of law and a misapprehension of the facts in connection therewith to review its judgment before it has been signed."

The next case to which our attention was called is a decision of the Patna High Court in the case of --'Mohan Singh v. Emperor', AIR 1944 Pat 209 (H). It was also a 'criminal' case. It appears that at the close of the hearing, judgment was delivered by the High Court, but before it was signed it was discovered that the judgment which was pronounced was due entirely to an inaccurate copy of certain notifications filed. It was held in these circumstances that the judgment could be re-considered as it was not signed; moreover, in the particular circumstances that had happened, it was necessary to revise the judgment delivered earlier.

7. It is not at all necessary to refer to many other rulings of this type. Suffice it to say that, the position of a judgment given by the High Court in a 'criminal' case in the exercise of its appellate or revisional jurisdiction is well established now in view of the rulings referred to above.

8. The crucial question, however, remains whether in a 'civil case', like the present, a judgment delivered in open court arid dictated to a shorthand writer before the transcript of the same is signed by the Judge or Judges concerned, amounts to a final disposal of the case. As stated already, in the present case, the transcript of the judgment dictated in open court on the 10-11-1947, was never signed. by the two learned Judges who heard the case. On the contrary, later on, the same learned Judges heard further arguments regarding. the merits of the case on 9-12-1947, but the arguments were not finished on that day. It seems to us clear that in this case one has to look to the provisions of the Code of Civil Procedure in order to discover the relevant previsions of law which bear on this question.

9. First of all, we may refer to the provisions of Order 20 Rules 1 to 3 and Order 41, Rules, 30 and 31 of the Civil Procedure Code. Order 20, Rule 1 provides that the Court, after the case has been heard, shall pronounce judgment in open court, either att once or on some future date of which due notice must foe given to the parties or their pleaders. Rule 2 of the same Order provides for the delivery of a judgment written, but not pronounced by the predecessor. Rule 3 provides: "The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by Section 152 or on review." The provisions of Rule 3 clearly indicate that the judgment has to be dated and signed at. the time it is pronounced.

A contention has, however, been raised before us that Order 20 Rule 3 is not applicable to the High Court. In urging this point, learned counsel appears to have overlooked a. recent decision by a Full Bench of this Court. The question whether Order 20 Rule 3 would apply to a case decided by the High Court has been decided and answered in the affirmative by a Full Bench of this Court in the case of --'Allah Rabul Almin v. Ganga Sahai', AIR 1947 All 211 (FB) (I). The facts of the case were these : A civil revision under Section 115, CiviE P. C. was dismissed by a learned single Judge of this Court. The learned counsel appearing: for the applicant was not present at the time-of the hearing. The case was, however, decided on its merits. The learned single Judge felt satisfied, after going through the record-that it was not a fit case, in which he would interfere with the order passed by the court below. Thereafter judgment was delivered on merits and it was signed, but before it could be actually sealed under Rule 8 of Chapter VII of the High Court Rules, the learned counsel appeared and prayed for a rehearing. It was in these circumstances that the question arose whether it was open to the learned single Judge who had heard and decided the revision in the first instance to rehear the case and, if need be, to alter the judgment which he had already given. This was one of the two questions which were considered ard decided by the Full Bench in this case. The decision of the Full Bench makes it clear that Order 49, Rule 2, C. P. C., as also Chapter 7 of the High Court Rules have nothing whatsoever to do with the question whether a Judge can or cannot alter a judgment after a judgment has been pronounced and signed by him. In this case, it was definitely laid down by the Full Bench that the provisions of Rule 3 of Order 20 Civil P. C. were applicable to judgments given by Chartered High Courts in their appellate or rcvisional jurisdiction. Further, it was held that the applicability of Rule 3 of Order 20 was not affected in any way by the provisions of Rule 2 of Order 49, Civil P. C. Consequently it was held that it was not competent to a Judge of the High Court who has once pronounced and signed a judgment on merits in a revision case 'ex parte' before him to recall and alter that judgment at the request of either party. It was laid down that there is no law which would justify a Judge in recalling or altering a judgment except, may be, in those cases where the Court may have inherent jurisdiction to rectify its own mistake.

10. In the present case, as mentioned above, the stage of dating and signing the judgment was never reached. It follows, therefore, that the jurisdiction of the Court to reconsider its order, if it deems desirable, and order a rehearing of the case continues. By reason of the provisions contained in Rule 3 of Order 20 of the Civil P. C., jurisdiction of the Court to reconsider and rehear a case Will cease only when a judgment has been signed. After it has been signed, the judgment cannot be altered or added to except as provided by Section 152 Civil P. C. or on review. The reason seems to be clear. Once a final judgment has been pronounced and the transcript has been signed, the Court becomes

'funclus officio' so far as the particular case is concerned and it cannot alter that judgment or order or even amend it except with regard to clerical errors or on review. So long as that stage has not been reached, as in the present case, obviously the power of the court to reconsider its order or rehear a case is not put an "end to.

11. At this stage, we may briefly refer to the case of -- 'Jai Karan v. Panchaiti Akhara, Chota Naya Udasi Nanak Shahi', AIR 1933 All 49(J), decided by Sulaiman, C. J. After hearing arguments in this case, the learned Chief Justice dictated an order in open Court. Immediately after, the counsel appearing for one of the parties, made a request that the judgment might not be signed by the learned Judge and that the question of limitation arising in the case might be further considered. This request was acceded to by the learned Judge. Later, however, the transcript of the judgment was signed by sheer inadvertence. In these circumstances, it was held by the learned Chief Justice that in exercise of the inherent jurisdiction, the High Court can set aside the order and rehear the case. Obviously this was a case where a mistake committed by the Court itself was later set right in the exercise of its inherent jurisdiction. This case, therefore does not really help us so far as the present case is concerned. In the course of arguments, reference was also made to the rules contained in Chapter 7 of the High Court Rules. We are, however, quite clear in our minds that none of the rules contained in Chapter 7 of the High Court Rules is really of any help to us in deciding the question which has arisen in the present case. It is, therefore, unnecessary to refer to any of those rules.

12. The provisions of Order 41, Rule 31 of the Civil Procedure Code, as amended by the Allahabad High Court, also make it clear that the transcript of the judgment dictated to a shorthand writer in open court at the time when a Judge pronounces his judgment, shall, after such revision, as may be deemed necessary, be signed by the Judge concerned and it shall bear the date of the pronouncing of the judgment.

13. For the reasons given above, in our judgment this second appeal has not yet been legally disposed of by this Court. We accord ingly reject the contention urged by the learn ed counsel for the appellant. The case must now be put up for hearing and disposal before a Bench of this Court.