

Brij Mohan Dixit vs Gobardhan And Ors. on 30 April, 1954

Equivalent citations: AIR1955ALL126, AIR 1955 ALLAHABAD 126

ORDER

Brij Mohan Lall, J.

1. This is an application in revision by one Pandit Brij Mohan Dixit against an order passed by the learned District Judge of Banaras rejecting his application for review of judgment. The reason given by the learned Judge for throwing out the review application is that it was presented to the Munsarim and not to him (the Judge).

2. It is contended by the learned counsel for the applicant that it was not obligatory on the part of the applicant to present the petition for review to the Judge personally and that presentation to the Munsarim of the Court amounted to a substantial compliance with law. I have, therefore, to examine how far presentation to Munsarim is permitted by law.

3. Order 47, Rule 1, Civil P. C., lays down that in certain given circumstances and on grounds specified in the said rule any person considering himself aggrieved by a decree or order of a Court may apply for a review of Judgment "to the Court which passed the decree or made the order."

Rule 2 imposes further restrictions on the right of presentation of such petitions and lays down that except in certain given circumstances the application for review must be presented to the very Judge who passed the order or made the decree sought to be reviewed. If the learned Judge has been transferred or has, for any other reason, quitted office no petition of the kind contemplated by Rule 2 can be presented at all.

What is significant is that there is no indication in either of these two Rules that presentation can be made to any other officer of the Court as distinct from the presiding officer. Whenever it is the intention of the law that presentation to a ministerial officer should be deemed sufficient it has expressly said so.

For instance, it is provided by Order 21, Rule 10 that an applicant for execution of decree "shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf.."

The words "officer (if any) appointed; in this behalf" do not find place either in Rule 1 or Rule 2 of Order 47. By a comparison of the language of Order 21, Rule 10 with the language of Rules 1 and 2 of Order 47 one is driven unmistakably to the conclusion that it was not the intention of the (sic) to permit presentation of review application (sic) before the Munsarim.

4. Reference may also be made in this connection to the language of Order 16, Rule 1 where it (sic) laid down that the parties may obtain "on application to the Court or to such officer as it appoin(sic) in this behalf" summonses for attendance of wi(sic) nesses. The language of this Rule also indicat(sic) that wherever the Legislature intended to perm(sic) the presentation of any particular application(sic) the Munsarim it has expressly said so.

Again one finds that Order 4, Rule 1, Civil P. C. permits the presentation of a plaint "to the Court or such officer as it appoints in this behalf." Order 41, Rule 1 enables the appellant to present a memorandum of appeal "to the Court or to such officer as it appoints in this behalf." The. absence of similar clauses in Rules 1 and 2 of Order 47 is not without significance.

A comparison of the language of these Rules leads to the irresistible conclusion that it was never the intention of the Legislature to permit the presentation of the petition of review to the Munsarim of the Court. Such application should be presented, as laid down in Rule 1 of Order 47 "to the Court."

5. In the case of -- 'Munro v. Kanpur Municipal Board', 12 All 57 (A) it was held at p. 59 that "the application (for review) should have been presented to the Judge and not to the Munsarim." It is true that no reason was given in support of the above proposition but the fact remains that the view taken by a Divisional Bench of this Court was to the effect that presentation to Munsarim was not proper presentation of an application for review of Judgment.

6. Learned counsel for the applicant has drawn my attention to the case of -- 'Ganga Prasad v. Mst. Saroop Dei', AIR 1951 All 568 (B), in which P. L. Bhargava. J. made certain remarks which militate against this view. But it may be pointed out that the remarks were 'obiter dicta'. At column 1, page 569 he remarked as follows: "There is nothing on the record to show that the application was presented to the Munsarim.

On the other hand, the order-sheet goes to show that the application was presented in Court.."

7. Since the application was presented in that case to the Court itself and was not presented to the Munsarim the question whether presentation to the Munsarim was or was not proper did not arise for decision. In the circumstances, I am unable, with utmost respect to the learned Judge, to subscribe to the view expressed by him in his 'obiter dicta', viz., that presentation to Munsarim was a proper presentation.

8. In view of what has been said above I am of the opinion that an application for review of judgment should be presented to the presiding officer and not to the Munsarim. Since the present application was presented to the Munsarim there was no proper presentation and the learned Judge was perfectly right in rejecting it.

9. There is no force in this revision. It is dismissed with costs.