Rami Manprasad Gordhandas And Ors. vs Gopichand Shersing Gupta And Ors. on 24 August, 1972

Equivalent citations: AIR1973SC566, (1973)4SCC89, 1973(5)UJ258(SC), AIR 1973 SUPREME COURT 566, 1973 4 SCC 89, 1973 (1) SCWR 73, 1972 RENCR 809

Bench: A.N. Ray, I.D. Dua

JUDGMENT

Dua, J.

1. This is a plaintiff-lardlord's appeal by special leave under Article 136 of the Constitution. It is directed against the judgment of a learned Judge of the High Court of Gujarat at Ahmedabad dismissing revision application No. 393 of 1963 treated by the High Court to be under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 57 of 1947 hereinafter called the Act.

2. The plaintiff a public trust-instituted a suit for possession of the premises in question against the tenants (who are respondents in this Court) on the ground inter alia of failure to pay rent. That suit was dismissed by the Additional Judge, Small Causes Court at Ahmedabad on the ground that the notice given by the landlord was defective. It is unnecessary for our present purpose to go into other details or the history of the suit proceedings in the trial court.

3. The City Civil Court, Ahmedabad (VII Court, dismissed the appeal on January 15, 1963. The plaintiff-appellant thereupon moved the Gujarat High Court by means of a civil revision application. No law was stated in the memorandum of revision under which the High Court was approached for revision of the appellate judgment. The High Court, as appears from the impugned judgment dated January 12, 1967, treated the revision application to be under Section 29(2) of the Act and after discussing the points raised dismissed the same holding the notice given by the landlord to be invalid. It is this judgment which is challenged by the plaintiff in this Court.

4. Shri S.T. Desai has raised a preliminary objection to the competence of the appeal. According to him, on the date of the appellate judgment of the City Civil Court, the said judgment was neither open to further appeal nor was there any provision in the Act under which the High Court could be approached for revising the said judgment, with the result that the revision preferred by the plaintiff-appellant had in any event to be dismissed as incompetent. The ground on which the High Court dismissed the revision is, therefore, immaterial because under the law it is not open to the plaintiff-appellant to urge that the High Court could or should have granted any relief on an

incompetent revision. In our view, this point is relevant more to the merits than to the competency of the appeal.

5. Section 29 of the Act as it stood before the amendment by the Gujarat Act 18 of 1966 reads as under:

> 29. Appeal (1) Notwithstanding anything contained in any law, an appeal shall lie-
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> (a) in Greater Bombay, from a decree or order made by the Court of Small Causes, Bombay, exercising jurisdiction under Section 28, to a bench of two judges of the Court which shall not include the Judge who made such decree or order;
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> (b) else where, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887 or by the Court of the Civil Judge deemed to be the Court of Small Causes under Clause (c) of Sub-section (2) of Section 28 or by a Civil Judge exercising such jurisdiction, to the District Court.

Provided that no such appeal shall He from-

(I) a decree or order made in any suit or proceeding in respect of which no appeal lies under the CPC, 1908;

(II) a decree or order made in any suit or proceeding (other than a suit or proceeding relating to possession) in which the plaintiff seeks to recover rent and the amount or value of the subject matter of which does not exceed -

(i) where such suit or proceeding is instituted in Greater Bombay, Rs. 3000/- and

(ii) where such suit or proceeding is instituted elsewhere, the amount up to which the Judge or Court specified in Clause (b) is invested with jurisdiction of a Court of Small Causes, under any law for the time being in force;

(III) an order made upon an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies;

(IV) an order made upon an application by a tenant for a direction to restore any essential supply or service in respect of the premises let to him.

(1A) Every appeal under Sub-section (1) shall be made within thirty days from the date of the decree or order, as the case may be :

> Provided that in computing the period of limitation prescribed by this sub-sec. the provisions contained in Sections 4, 5 and 12 of the Indian Limitation Act, 1908, shall, so far as may be, apply.

> (2) No further appeal shall lie against any decision in appeal under Sub-section (1).
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> (3) Where no appeal lies under this section from a decree or order in any suit or proceeding in Greater Bombay the Bench of two judges specified in Clause (a) of Sub-section (1) and elsewhere the District Court, may for the purpose of satisfying itself that the decree or order made was according to law, call for the case in which such decree or order was made and the bench or court aforesaid or the District Judge or any Judge to whom the case may be referred by the District Judge, shall pass such order with respect thereto as it or he thinks fit.

6. Sub-section (2) of this section plainly does not provide for revision to the High Court. It merely prohibits further appeal from the decision given on appeal under Sub-section (1) of Section 29. It is thus clear that the High Court was under some mistaken impression when it observed that the revision before it was under Section 29(2) of the Act. Right of appeal and revision, it is now wellsettled, is a creature of the statute and there can be no inherent right either of appeal or of revision against a judgment or order of a court.

7. Shri Desai has referred us no Keshavalal Jethalal Shah v. Mohanlal Bhagwandas and Anr. , for the view that Section 29(2) in its unamended form did not confer on the High Court any power of revision. Shri Shroff rightly conceding that he was bound by this decision relied on it for the submission that we should send the case back to the High Court for considering whether there were cogent grounds for interference under Section 115 CPC. In the reported case in a suit for ejectment and arrears of rent instituted under the Act with respect to certain premises in Ahmedabad, the trial court had disallowed the claim for ejectment but had inter alia granted a decree for arrears of rent. That decree was confirmed on appeal on February 25, 1963 under Section 29. The aggrieved tenant moved the High Court under Section 115, CPC for revision of the appellate decree. During the pendency of that revision Section 29(2) of the Act was amended by Gujarat Act 18 of 1965. The new Sub-section (2), while retaining the prohibition against further appeal, expressly conferred power of revision on the High Court. The new Sub-section (2) provides:

> No further appeal shall lie against any decision in appeal under Sub-section (1), but the High Court may for the purpose of satisfying itself that any such decision in appeal was according to law call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit.
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> The High Court, when considering the revision originally preferred under Section 115, CPC assumed that the amendment governed pending cases as well, and, therefore, empowered it to treat the pending revision also to be governed by Section 29(2). On this assumption the High Court exercised the wider power of revision conferred on it by the amended Section 29(2) and varied the impugned judgment on that basis. In this Court the view taken by the High Court was successfully challenged. This Court observed that the amended Section 29(2) was not retrospective in its operation, adding that it did not merely explain the scope of the existing revisional power of the High Court as contended in support of the order

appealed against. Allowing the appeal this Court set aside the order of the High Court and remanded the case back to it for disposing of the revision on the footing that it was governed by Section 115 of the CPC under which it had been filed.

8. Before us also Shri Shroff contended that although no provision of law was mentioned in the memorandum of revision presented by the appellant in the High Court, it must be assumed to have been tiled under Section 115, CPC. under which it could have been filed, and therefore, the case should be sent back to the High Court for disposing of the revision on the footing that it was governed by Section 115, CPC. Shri Shroff did not, as indeed, he could not, in face of the language of unamended Section 29(2) which governs the present case, contend that any revisional power vested in the High Court under this sub-section.

9. We are unable to accept this submission. In the reported case the revision expressly purported to have been filed under Section 115, CPC. Such is not the case before us. No request was made to the High Court to treat the revision under Section 115, C.P.C. and the only provision of law under which the revision was understood both by the plaintiff-appellant and the High to have been filed was Section 29(2). No doubt the label under which a revision is filed, if erroneous, does not estop the party from praying that the revision may be dealt with under the proper law applicable to the case and such a prayer has, as a rule, to be made in the court which is requested to exercise its judicial discretion for that purpose. Section 115, CPC, it is plain, vests the High Court with a discretionary power to be exercised judicially be interfere only when the cause of justice demands it. The High Court is not bound to interfere merely because the conditions in Clauses (a), (b) or (c) of Section 115 are satisfied. The appellant never requested the High Court to exercise its power under Section 115 of the Code and the High Court also did not consider the question of exercising its discretionary power thereunder. In this Court also no ground seems to have been taken in the special leave application complaining that the High Court was in error in failing to exercise the power conferred on it under Section 115, CPC We are, therefore, unable to find any cogent ground for permitting the appellant now to make out this new case in this Court with the result that the order of the High Court dismissing the appeal must be considered to be unexceptionable though we confine our decision only to the ground that no revision was competent in that court under Section 29(2) of the Act.

10. On the view that we have taken it is unnecessary to refer to the decision of this Court in Mrs. Manorama S. Masurekar v. Mrs. Dhanlaxmi G. Shah (1966) 7 Guj. LR 1061 dealing with the scope of the various sub-sections of Section 12 of the Act. It is equally unnecessary to refer to the unreported decision of this Court in Raghunathravji Dandakar v. Anant Naranyan Apte CA No. 387 of 1964 decided on April 5, 1966 also dealing with the scope of Section 12(2) of the Act, though it may be pointed out that this Court disallowed the respondent in the unreported case to raise for the first time in this Court the point that the High Court had no jurisdiction to interfere in revision under Section 115, CPC. there being no question of jurisdiction involved.

11. For the reasons foregoing this appeal fails and is dismissed with costs.