Hari Shankar vs Rao Girdhari Lal Chowdhury on 5 December, 1961

Equivalent citations: 1963 AIR 698, 1962 SCR SUPL. (1) 933, AIR 1963 SUPREME COURT 698, 64 PUN LR 1097 1962 SCD 579, 1962 SCD 579

Author: M. Hidayatullah

Bench: M. Hidayatullah, Bhuvneshwar P. Sinha, J.L. Kapur, J.C. Shah

PETITIONER:
HARI SHANKAR

Vs.

RESPONDENT:
RAO GIRDHARI LAL CHOWDHURY

DATE OF JUDGMENT:
05/12/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SINHA, BHUVNESHWAR P.(CJ)
KAPUR, J.L.
SHAH, J.C.

CITATION:
1963 AIR 698 1962 SCR Supl. (1) 933
CITATOR INFO :
RF 1964 SC 461 (4)
R 1964 SC1305 (20)
R 1964 SC1317 (15,16)
R 1965 SC 553 (2)
R 1969 SC1344 (8,9)
R 1974 SC1059 (6)
RF 1987 SC1782 (14,15)
R 1988 SC1422 (7)

ACT:
Revision Application-Concurrent findings of the courts below-No provision in statute for second appeal-High court, if dould re-assess the value of evidence-Distinction between appeal and revision-Delhi & Ajmer Reni Contgrol Act, 1952-(38 of 1952), ss. 34, 35 (1).

HEADNOTE:

In an ejectment suit under the Delhi & Ajmer Rent Control Act, 1952, the trial Judge decreed the suit and on appeal under s.34 of the Act the Additional District Judge confirmed

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the decision. The Act did not provide for a second appeal, and under s. 35 (1) a revision was filed against the Order of the Additional District Judge The single Judge of the Punjab High Court following a previous decision of the same High Court, was of opinion that in assessment as all the evidence was not considered it was competent for him to reconsider the concurrent findings of the courts below.

The question is whether the High Court in exercise of its revisional powers is entitled to re-assess the value of the evidence and to substitute its own conclusions of facts in place of those reached by the courts below.

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Held, (per Sinha, C. J., Hidayatullah and shah, JJ, that though s. 35 of the Delhi and Ajmer Rent Control Act is worded in general terms, but it does not create a right to have the case re-heard.

The distinction between an appeal and revision is a real one. A right to appeal carries with it right of re-hearing on law as well as fact, unless the statute conferring the right to appeal limits the re-hearing in some way. The power to hear a revision is generally given to a superior court so that it may satisfy, itself that a particular case decided according to law. The phrase "according to law" in s. 35 of the Act refers to the decision as a whole, and is not to be equated to errors of law or of fact simplicitor. All that the High Court can see is that these has been no miscarriage of justice and that the decision is according to law in the sense mentioned.

per Kapur, J.-The power under s. 35 (1) of the Act of interference by the High Court, is not restricted to a proper trial according to law or error in regard to onus of proof or proper opportunity of being heard. It is very much wider than that when in the question of the High Court the decision is erroneous on a question of law which affects the merits of the case or decision is manifestly unjust the High Court is entitled to

interfere.
Bell and Co. Ltd. v. Waman Hemraj (1938) 40
Bom. LR. 125 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 94 of 1959.

Appeal by special leave from the judgment and decree dated May 7, 1957, of the Punjab High Court (Circuit Bench) at Delhi in Civil Revision Application No. 144-D of 1957.

Bishan Narain R. Mahalingier and B. C. Misra for the appellants.

Gurbachan Singh and Harbans Singh, for the respondent.

1961. December 5. The Judgment of Sinha, C.J., Hidayatullah and Shah, JJ., was delivered by Hidayatullah, J. Kapur, J. delivered a separate judgment.

HIDAYATULLAH, J.-The appellants (in this appeal by special leave) are the sons of one Gauri Shankar, who owned a bungalow known as 5, Haily Road, New Delhi. This bungalow was given to the respondent by Gauri Shankar on a monthly rent of Rs. 234-6-0, excluding taxes. The suit, out of which this appeal arises, was brought by the appellants against the respondent, Rao Girdhari Lal Chowdhury, for his eviction on the ground (among others) that he had sub-let a portion of the bungalow after the commencement of the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952) to one, Dr. Mohani Jain, without obtaining the consent in writing of the landlord, as required by s. 13(1)(b)(i) of the Act. The defence was that the original contract of tenancy was entered into sometime in 1940 and a term in the contract gave the tenant right to sub-let. It was alleged that a letter written by the tenant which embodied the terms of the tenancy was in the possession of the landlord and a demand was made for its production. The case of the tenant was that the sub-tenancy commenced in the year 1951, that is to say, before the passing of the Act of 1952, and the tenant was not required to obtain the written consent of the landlord to sublet Admittedly, in this case, no written consent was proved. We need not mention the other allegations and counter-allegations which are usual in proceedings between landlords and tenants, the most important of them being about the arrears of rent, which the tenant under permission of the Court ultimately deposited in Court.

The issue on which the decisions below have differed was framed by the Sub-Judge, First Class, Delhi, in the following terms:

> "Did the plaintiff consent to the sub- letting of parts of the demised premises by the defendant ? If so, when and to what effect."

The trial Judge found that there was no evidence that the landlord was ever consulted before a

portion of the bungalow was sublet to Dr. Mohani Jain, and further that the sub-tenancy was created after June 9, 1952, the date on which the Act came into force. In reaching the latter conclusion, the trial Judge made a reference to a dispute between the tenant and Dr. Mohani Jain for fixation of standard rent before the Rent Control authorities. In those proceedings, Dr. Mohani Jain had alleged that she was living as a sub-tenant from the end of 1951, but the tenant had denied this fact. The proceedings before the Rent Control authorities ended in a compromise, but the admission of the tenant was relied upon to support the conclusion that the sub-tenancy commenced after the Act. The trial Judge decreed the suit. The decision of the trial Judge was confirmed on appeal by the Additional District Judge, Delhi. Though Dr. Mohani Jain gave oral evidence in this case that her sub-tenancy commenced in December 1951, the Additional District Judge found categorically that the sub-tenancy commenced sometime after the coming into force of the Act. He held that even if Dr. Mohani Jain was living there even from before it was a guest and not as a sub-tenant.

Against the order of the Additional District Judge, a revision was filed under s. 35 (1) of the Act. That section reads as follows:

> "The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit."

Acting in accordance with a decision of the Punjab High Court as to the ambit of this section, the learned single Judge, who heard the revision application, thought that it was competent for him to reconsider the concurrent findings about the time when the sub-tenancy commenced. He held that Dr. Mohani Jain's statement showed that the sub- tenancy commenced prior to the passing of the Act, and that the landlord's consent in writing was not necessary. In reaching this conclusion, the learned Judge was of opinion that all the evidence was not considered by the two Courts below, and that he was entitled, in view of the interpretation placed upon the section above quoted, to go into the matter afresh, and decide the question of fact.

It may be pointed out that while the suit was pending before the Subordinate Judge, an application was made for the production of the letter referred to in the written statement of the tenant, to which a passing reference has already been made. A letter was produced, and it is Ex. D-

1. That letter does not disclose all the terms of the tenancy and it would appear, therefore, that the terms of the original tenancy have not been proved in this case, and there is no material on which it can be said either way as to whether a right to sublet was conferred upon the tenant. The defendant did not insist in the Court of first instance that there was yet another letter, and the argument to that effect in this Court cannot be entertained.

In reaching the conclusion that all the evidence pertinent to the issue was not considered, the learned Judge of the High Court stated that Ex.P-19, which was the petition filed by Dr. Mohani Jain under s. 8 of the Act to get the standard rent fixed was not taken into account by the Additional District Judge. That petition contained an averment that her sub-tenancy commenced on December

1, 1951 with a rent of Rs. 100/-per month, and that a cheque for Rs. 1,800/- as advance rent for 18 months was given by her in the name of the daughter of the tenant, because the tenant represented that he had no account in the bank and therefore a cheque should be given in the name of his daughter. This, the learned Judge felt, adequately supported the statement of Dr. Mohani Jain to the same effect as a witness in this case. The learned Judge was in error in thinking that Ex. P-19 was not taken into account by the Additional District Judge. The latter had, in fact, considered Ex. P-19, the petition of Dr. Mohani Jain, before the Rent Control authorities. Ex. P-20, the reply of the tenant to that petition and Ex.P-21, the petition of compromise; but he cited Exs. P-20 and P-21 only. There is internal evidence to show that Ex. P-19 was, in fact, considered, because after mentioning the two Exhibits, the learned Additional District Judge goes on to say as follows:

> "The first of these is the written statement of the present appellant which he had filed in a case brought by Dr. Mohani Jain against him for the fixation of fair rent. There he had completely denied somewhere in the year 1953 that Dr. Mohani Jain was his subtenant and could not sue for fixation of rent. This was enough to show that right up to the year 1953 the appellant himself did not regard Dr. Mohani Jain as a sub-tenant."

This clearly shows that the learned Additional District Judge was weighing Ex. P-19 as against Ex. P20 and was acting on Ex. P-20, which contained a material admission by the tenant before the present dispute had begun. The learned single Judge was, therefore, in error in departing from a concurrent finding of fact on a wrong supposition.

But the question that arises in this appeal is one deeper than a mere appraisal of the evidence. It is whether the High Court in the exercise of its revisional power is entitled to re-assess the value of the evidence and to substitute its own conclusions of fact in place of those reached by the Court below. This question requires an examination of the powers of revision conferred on the High Court by s. 35 of the Act. That question is one of common occurrence in Acts dealing with some special kinds of rights and remedies to enforce them. Section 35 is undoubtedly worded in general terms, but it does not create right to have the case reheard, as was supposed by the learned Judge. Section 35 follows s. 34, where a right of appeal is conferred; but the second sub-section of that section says that no second appeal shall lie.

The distinction between an appeal and a revision is a real one. A right of appeal carries with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing in some way as, we find, has been done is second appeals arising under the Code of Civil Procedure. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. Under s. 115 of the Code of Civil Procedure. the High Court's power are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other acts, the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit.

The phrase "according to law" refers to the decision as a whole, and is not to be equated to errors of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which s. 115 is limited. But it must not be overlooked that the section in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit-is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is "according to law". It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.

The section we are dealing with, is almost the same as s. 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J. (as he then was) in Bell & Co. Ltd. v. Waman Hemraj (1) where the learned Chief Justice, dealing with s. 25 of the Provincial Small Cause Courts Act, observed:

> "The object of s. 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law. The section does not enumerate the cases in which the Court may interfere in revision, as does s.115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

This observation has our full concurrence.

What the learned Chief Justice has said applies to s. 35 of the Act, with which we are concerned. Judged from this point of view, the learned single Judge was not justified in interfering with a plan finding of fact and more so, because he himself proceeded on a wrong assumption.

The appeal thus succeeds, and is allowed with costs. The order under appeal is set aside, and that of the Additional District Judge restored. As regards eviction, the respondent has given an undertaking that he would vacate the house on or before April 25, 1962, and this has been accepted by the appellants.

KAPUR J.-I agree that the appeal should be allowed and that the High Court was in error in interfering with the finding of fact, but in my opinion the power of revision under s. 35(1) of the Delhi & Ajmer Rent Control Act is not so restricted as was held by Beaumont, C. J., in Bell & Co. Ltd. v. Waman Hemraj(1), a case under s. 25 of the Provincial Small Cause Courts Act. The section provides that the order passed should be in accordance with law and if it does not then the High Court can pass such order as it thinks fit. The language used in s. 35(1) of the Act is almost identical with the words of the proviso to s.75(1) of the Provincial Insolvency Act. The power under that proviso has been thus commented upon by Mulla in his Law of Insolvency at page 787 of 2nd Edition:

> "The power given to the High Court by this proviso is very wide. In the exercise of this power the High Court may set aside any order if it is not `according to law'."

The power under the Insolvency Act has not, by the Courts in India, been considered to be do restricted as the observations of Beaumont, C. J. in Bell & Co. Ltd. v. Waman Hemraj(1) seem to suggest in regard to s. 25 of the Small Cause Courts Act. This power of interference by the High Court is not, in my opinion, restricted to proper trial according to law or error in regard to onus of proof or proper opportunity of being heard. It is very much wider than that. When, in the opinion of the High Court, the decision is erroneous on a question of law which affects the merits of the case or decision is manifestly unjust the High Court is entitled to interfere. The error may not necessarily be as to the interpretation of a provision of law, it may be in regard to evidence on the record. Thus when material evidence on the record is ignored or a finding is such that on the evidence taken as a whole no tribunal could, as a matter of legitimate inference arrive at. It is neither possible nor desirable to enumerate all cases which would fall within the jurisdiction of the High Court under s. 35(1) of the Act but it is not to be narrowly interpreted nor to be so widely interpreted as to convert the revision into an appeal on facts.

Appeal allowed.