State of U.P. and Others Vs Chaddha Srichand and Co.

Court: Allahabad High Court

Date of Decision: Feb. 18, 1972

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115

Citation: AIR 1972 All 437 : (1972) 42 AWR 354

Hon'ble Judges: R.S. Pathak, J; Hari Swarup, J

Bench: Division Bench

Advocate: Deoki Nandan, for the Respondent

Final Decision: Disposed Of

Judgement

Pathak, J.
Upon application made by Chaddha Sri Chand and Co., Basti in a suit filed by them against the State of Uttar Pradesh and its

officers, the learned Civil Judge, Basti made an order consolidating that suit with a suit filed by the State against them. Against that order, the State

has applied to this Court u/s 115 of the Code of Civil Procedure. When the revision application came on for admission before one of us (Hari

Swarup, J.), a question arose whether it should be entertained inasmuch as such a revision application could also be entertained now by the

learned District Judge under the amended Section 115. Accordiagly, the following question was referred for decision by a Division Bench:--

Whether the High Court should entertain a revision directly in cases where a revision u/s 115, C.P.C. is also entertainable by the District Judge

without requiring the litigant to approach the District Judge before coming to this Court?

2. The matter is now before us.

3. The Uttar Pradesh Civil Laws Amendment Act, 1970 (U. P. Act No. 14 of 1970) amended Section 115 so that it reads now as follows:

115. The High Court or the District Court may call for the record of any case which has been decided by any court sub-ordinate to such High

Court or District Court and in which no appeal lies thereto, and if such subordinate court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise its jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

The High Court or the District Court may make such order in the case as it thinks fit.

Provided that nothing in this section shall be construed to empower the District Court to call for the record of any case arising out of an original suit

of the value of Rs. 20,000/- or above.

4. The same amendment Act amended Section 21 of the Bengal, Agra and Assam Civil Courts Act by substituting a provision enlarging the

appellate jurisdiction of the District Judge to appeals arising out of suits of a value less than Rupees 20,000/- and confining the appellate jurisdiction

of the High Court to appeals arising out of suits of a value of Rs. 20,000/-and above.

5. The enlargement of the pecuniary appellate jurisdiction of the District Judge and the corresponding curtailment of that of the High Court as well

as the conferment of a revisional jurisdiction upon the District Court are measures which have been introduced for the purpose of reducing the

pressure of work in the High Court. That appears to be clear from the Statement of Objects and Reasons annexed to the Bill introduced in the

Legislature.

6. The amended Section 115 plainly provides that a revision application may lie against the same order either to the District Court or to the High

Court. The High Court has always enjoyed revisional jurisdiction over the record of a very case decided by a subordinate court in which no appeal

lies to it. Revisional jurisdiction has now also been conferred upon the District Court.

7. At the outset Mr. Deokinandan Agrawal. appearing for the respondents, urges that the present revision application is not maintainable in this

Court as the value of the suit is less than Rs. 20,000/-He contends that the effect of the amendment is to provide distinct and mutually exclusive

areas of revisional jurisdiction to the High Court and the District Court. It is urged that the District Court has exclusive revisional jurisdiction in

cases where the suit is of a value less than Rs. 20,000/-while the High Court has exclusive jurisdiction in a suit of the value of Rupees 20,000/- or

above. That submission rests primarily on the basis of the proviso now added in Section 115. The proviso, it seems to us, cannot be pressed into

service to secure that result. Plainly, it does no more than curtail the revisional jurisdiction of the District Court. It does not in any way affect the

wide sweep of the revisional jurisdiction always enjoyed by the High Court. As a result of the proviso the District Judge enjoys revisional

Jurisdiction under the amended Section 115 only in those cases where the value of the original suit is below Rs. 20,000/-. The High Court, on the

contrary, enjoys revisional jurisdiction in cases arising out of all original suits without regard to their value.

8. There can be no dispute that the revisional jurisdiction of the High Court u/s 115 is a discretionary jurisdiction. That discretion no doubt must be

exercised in accordance with judicial principle. It is not possible to detail the kind of cases in which the High Court should exercise its revisional

jurisdiction and those in which it should not. Plainly, having regard to the vast number of different kinds of cases which may arise, such enumeration

is not possible. The rule which can be employed is to consider all those facts and circumstances which are involved in tie question raised before the

High Court, the surrounding facts and circumstances in which it is raised and the considerations of justice which come into play. In the ultimate

analysis, the High Court should interfere in revision where the interests of justice require it to do so.

9. Now, it seems to us open to the High Court to decide not to entertain a revision application u/s 115 on the ground that the applicant should first

move the District Judge in that behalf. That, we think, should be the general rule and should be departed from only in exceptional cases where the

High Court is satisfied that to compel the applicant to apply in revision first to the District Judge would visit the applicant with great hardship and

would prejudice the interests of justice. That approach is recommended by several considerations. The record of the original suit out of which the

revision application is brought would be more easily available to the District Judge than it would be to the High Court. Its removal from the trial

Court to the Court of the District Judge would take less time and produce less inconvenience than if it were to be brought from the trial Court to

the High Court. And on the conclusion of the revisional proceeding, the proceeding before the trial Court could be resumed with less

inconvenience and less loss of time. Moreover, in case revision application is brought thereafter to the High Court, the High Court would generally

have the benefit of a considered order of the District Judge on the jurisdictional question raised in respect or the trial proceeding. Considerations

such as these have repeatedly prevailed with this Court in revision applications filed before it under the Code of Criminal Procedure. The practice

generally followed by this Court has been that a party invoking the revisional jurisdiction of this Court under that Code is first required to apply to

the Court below. It is true that in cases under the Code of Criminal Procedure when a revision application is filed before the learned Sessions

Judge the case is not disposed of finally by him where he considers that relief should be granted, but it is referred to the High Court for that

purpose. That is a feature, however, which makes no substantial difference. The principle is equally valid in the case of revision applications u/s

115 of the Code of Civil Procedure, even though under that provision it is open to the District Judge to dispose of a revision application finally.

10. The considerations upon which the High Court declines to entertain a revision application u/s 439 of the Code of Criminal Procedure in the first

instance are relevant for the purposes of the question before us. In Shailabala Devi Vs. Emperor , Sulaiman, C. J. observed:

At the same time it is quite clear that a practice has grown in this Court to refuse to entertain applications direct, until the District Magistrate or the

Sessions Judge has been approached. This practice is based largely on convenience, and seems to me to be sound. The District Magistrate or the

Sessions Judge is on the spot and easily- accessible and the record can be locally called for promptly without any loss of time and without the

necessity of sending it through the post. The proceedings are also likely to be less expensive. The High Court is a superior Court and its time would

not be unnecessarily spent in examining the record and in some cases even considering the evidence when a Subordinate Court has already

considered the matter and made its report. Further, the High Court would have the opinion of another Court before it which would be of help. In

practice no great harm is likely to be suffered by the accused, if he is required to go to the District Magistrate or the Sessions Judge in the first

instance. When a practice of this land becomes well-known to the members of the Bar in the Mufussil and in the High Court the accused would be

advised to approach the subordinate Court forthwith and not attempt to file a revision in the High Court direct. In many cases, if the District.

Magistrate or the Sessions Judge reports in favour of the accused, he need not be represented in the High Court, particularly when the illegality of

the conviction or the severity of the sentence is patent. On the other hand, if such a salutary rule of practice were not to prevail, there would be $

temptation, and even an encouragement, to accused persons to come up straight to the High Court over the head of the District Magistrate or the

Sessions Judge concerned, because the latter can only report to the High Court and cannot themselves pass an order in favour of the accused.

Many accused persons may therefore think it more expeditious and much cheaper to come up straight to the High Court. The High Court would

then be flooded with such applications.

11. Reference was. made by the learned Chief Justice in his judgment to Empress of India v. Nilambar Babu (1878) ILR 2 All 276 where

Spankie, J. said:

Resort to this Court as one of revision was premature, and it has been the practice, I think, of this Court not to interfere in revision when the

petitioner has neglected to avail himself of the ordinary channel of relief below.

12. That was also the view taken in Empress v. PhnI Koeri 1887 All WN 105. In Queen-Empress v. Janki Prasad, 1888 AH WN 132 Straight,

J. referred to the invariable practice in respect of revision applications to refuse to revise orders in the High Court when the applicant could have

obtained relief from a subordinate Court. The learned Judge pointed out that the High Court should entertain such an application only under very

exceptional circumstances. Other cases where that view has been taken by this Court are Emperor v. Kali Charan 1904 All WN 232

Shafaqatullah v. Wali Ahmad Khan, (1908) ILR 30 All 116 : Ajudhia Puri Vs. Brij Bhukhan and Others, Sharif Ahmad Vs. Qabul Singh, In Nathe

Singh and Others Vs. Emperor , Kendall, J., took the view that according to the practice of the High Court on the criminal side an application to

the lower Court should be considered an essential step in the procedure. That was also the view in Sukhraj Singh and Others Vs. Emperor .

Reference may also be made to Jadunandan Misra and Others Vs. Sheopahal and Balkrishna Sharma Vs. Emperor . Down the years the practice

has been repeatedly referred to and the long line of cases includes Mohammad Hashim Vs. Notified Area ; R.N. Basu (for B. Parshottam Das

Tandon) Vs. Emperor and recently in State Vs. Smt. Rampo and Others, ; S.P. Dubey Vs. Narsingh Bahadur, and Municipal Board Vs. Bhim

Singh, .

13. We are of opinion that the considerations which have led to the practice in respect of revision applications under the Code of Criminal

Procedure should also be generally applied in respect of revision applications under the amended Section. 115 of the Code of Civil Procedure.

14. But it is urged that if the appellant is compelled to file a revision application before the District Judge first, the order of the trial Court against

which the applicant is aggrieved will merge into the order of the District Judge disposing of the revision application and this is so whether the

learned District Judge allows the revision application or dismisses it We are referred to Collector of Customs, Calcutta Vs. East India Commercial

Co. Ltd., and State of Madras Vs. Madurai Mills Co., Ltd., . We do not see how the operation of the doctrine of merger affects the question

before us. It is now settled law in this Court that when the lower appellate Court disposes of an appeal against an order of the trial Court on a

jurisdictional question, a revision application will lie to the High Court against the appellate order of the lower Court and it will be open to the High

Court to examine whether the view taken by the lower Court as to the jurisdiction of the trial Court should be allowed to prevail, as long ago as

Badami Kuar v. Dinu Rai (1886) ILR 8 All 111 a Full Bench of this Court consisting of five Judges took the view that the High Court could do so.

In Ram Iqbal Rai Vs. Telessari Kuari and Another , a question was raised whether the High Court could interfere on the revisional side against the

order of the lower appellate Court holding that the Munsif had wrongly exercised jurisdiction to entertain a suit. A Full Bench of this Court held

that the appellate Court had no jurisdiction to order a subordinate Court, which was legally not competent to try a suit, to hear it and dispose it of

and that if it did actually order to subordinate Court to dispose of the case it acted without jurisdiction and also acted illegally in the exercise of its

jurisdiction. Therefore, the order of the appellate Court could be revised u/s 115 of the Code. Sulaiman, C. J,, observed:

..... the mere fact that there was an appeal preferred to the District Judge did not cure the initial defect that the Munsif had no jurisdiction to

entertain the suit and did not confer upon the judge power to direct the Munsif to dispose of it; and therefore the High Court has power to set

aside the order of the District Judge.

Mukherji, J. said:

There can be no doubt that in this particular case, the District Judge, if the suit had been filed before him, would not have been competent to

exercise jurisdiction and could not try the suit. The argument that has been advanced on behalf of the plaintiff, the respondent before us, is that

although the District Judge himself could not exercise the jurisdiction and hear the suit, if it had been instituted in his Court he having directed the

Munsif to go on with the suit and to try it, the High Court is powerless to interfere. In other words, if the District Judge who is the principal Court

of original civil jurisdiction, if he himself had taken cognizance of the suit, we could interfere on the ground that he was exercising a jurisdiction not

vested in him. Yet, if he directs a subordinate Court to do what he himself could not do, we have no power to interfere. This is a very anomalous

position and certainly is a position which could not have been allowed by the legislature. When we interpret an Act we are entitled to see what was

the mischief contemplated to the correction of which the rule of law was directed..... We find that Section 115, Civil P. C. is a remedy given to the

High Court to apply in order to rectify mistakes as to jurisdiction. When a Court trying a suit has no jurisdiction it is necessary that the mistake

should be corrected as speedily as possible. We must, therefore, take it that we have jurisdiction to correct a District Judge, if he sat as the

principal Court or original civil jurisdiction. We have also an authority within Section 115, Civil P. C. to correct him when he, the District Judge,

sitting as an appellate Court, directs the subordinate Court to do what he himself could not do.

Niyamatullah, J., the third learned Judge agreed with the view taken by the other two learned [fudges.

15. Deokinandan Pandey Vs. Ram Chandra Tewari and Others, , was a case where the Munsif held that he had no jurisdiction to entertain the suit

and on appeal the District Judge took the same view. On a revision application filed in the High Court against the appellate order of the District

Judge, the learned Judges, Niyamatullah and Harries, JJ., treated the case as raising the question whether the Munsif had jurisdiction to entertain

the suit filed in its Court. ""The question involved"", they observed, ""is directly one relating to his jurisdiction and we have no doubt that the High

Court has power u/s 115 to interfere in revision"", and they relied on Badami Kuer (1886) ILR 8 All 111 (supra).

16. Therefore, both in cases where the appellate Court interfered with the order of the trial Court and where it did not do so but affirmed the order

of the trial Court, this Court has generally taken the view that it could interfere in the exercise of its revisional jurisdiction u/s 115 of the Code of

Civil Procedure. If that rule is to be followed, as we think it should be, in cases where the revisional jurisdiction of the District Judge is invoked

first, there can be no dispute that circumstance does not preclude the High Court subsequently from exercising its revisional jurisdiction against the

order of the District Judge.

17. It is pointed out that there may be cases where the District Judge may decline to grant relief in his discretion in the revision application filed

before him and, it is urged, this Court then cannot effectively exercise its revisional jurisdiction u/s 115. We do not see any ground for this

apprehension. If the District Judge declines to exercise his revisional jurisdiction on grounds which are wholly unsustainable the High Court can

always interfere upon a revision application filed before it. It will be a case where the District Judge has failed to exercise his jurisdiction. If,

however, the grounds upon which the District Judge declines to exercise his discretionary jurisdiction can be sustained, no complaint can arise.

After all, the principles underlying the exercise of such discretion have equal play, whether in a revision application be-fore the District Judge or in a

revision application before the High Court.

18. In our opinion, the High Court should not generally entertain a revision application u/s 115 of the Code or Civil Procedure where a revision

application under that provision is also entertainable by the District Judge and has not been filed before him or if filed has not been disposed of by

him, except where adherence to this course would seriously prejudice the applicant and be detrimental to the interests of justice. The question

referred is answered accordingly.

19. The papers of this case will now be placed before a learned single Judge along with our answer to the question referred.