
(1963) 12 MP CK 0013

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 94 of 1963

Dhullchand Bhuraji

APPELLANT

Vs

Chain Singh Bachu
Singh and another

RESPONDENT

Date of Decision: Dec. 12, 1963

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 21, 115

Citation: (1965) JLJ 997 : (1966) MPLJ 65

Hon'ble Judges: P.K. Tare, J

Bench: Single Bench

Advocate: R.K. Vijayvargiya, for the Appellant; S.L. Garg, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.K. Tare, J.

This petition is for setting aside the ex parte order, dated 26-3-1963 passed in Ghainsingh and Anr. v. Dulichand Civil Revision No. 550 of 1962, D /- 26-3-63 and for a rehearing of the revision. The ground alleged is that although the Petitioner had engaged a counsel, namely Shri R.K. Vijayvargiya Advocate, who had filed his power before the due date, namely, on 15-3-1963, the case was not heard on that date stated in the notice. It was actually heard on 26-3-1963, when it was decided ex parte. The counsel did not appear as his name was not mentioned in the cause list. Therefore, he failed to note the case in the cause list.

The Learned Counsel for the Respondents urged that Order 41, Rule 21, CPC would not be applicable to a revision u/s 115, CPC and, therefore, the present revision for setting aside an ex parte order is not tenable. In this connection, attention is invited to the

observations of Byers J. in [A. Ramamurthi Iyer and Others Vs. T.A. Meenakshisundarammal and Another](#), wherein the learned Judge held that a revision u/s 115 of the CPC could be dismissed in default but the High Court has no jurisdiction to restore the petition to file, as Order 9, Rule 9 read with Section 107 of the CPC or Order 41, Rule 19, CPC would not be applicable to civil revisions. I may only observe that it would lead to an anomalous results, if the High Court were assumed to have power of dismissal in default, and not have the power to restore the revision to file. It is to be noted that the dismissal can take place only by invoking Order 9, Rule 3, Code of Civil Procedure, or Order 9, Rule 8, or Order 41, Rule 15-A. of the CPC as amended by the Nagpur High Court, and Order 41, Rule 17, Code of Civil Procedure. In the alternative, the High Court could exercise inherent powers of dismissal. This dismissal in default of a revision cannot be justified under any specific provision of the Code of Civil Procedure. Therefore, if the High Court resorts to any one of the said provisions, the same, in my opinion, could be invoked for restoration of a revision petition dismissed in default.

In [Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal](#), their Lordships have laid down that apart from the provisions of Order 39, Rule 1, Code of Civil Procedure, the Court in exercise of inherent powers has the jurisdiction to grant an injunction in a case not covered by Order 39, Rule 1, Code of Civil Procedure. of course, such an injunction has to be granted in the interest of justice and on same judicial principle in an exceptional case. Sub all the same, a resort to exercise of inherent powers in suitable cases has been held justifiable by their Lordships.

The same principle, in my opinion, can be applied to other cases of dismissals in default and restorations. It is true that inherent powers are not to be used so as to sat at naught the specific provisions relating to procedure in the Code of Civil Procedure. But it is only to meet the ends of justice in exceptional cases that inherent power might be exercised. In this connection, I may refer to the observations of a Division Bench of this Court presided over by Hidayatullah C.J. (as he then was) and Mangalmurti J. in *Dhondiba Appasaheb and Anr. v. Wasudeo Anant Sherlekar and Anr.* 1956 NLJ 677 : 1956 MELJ 117 : AIR 1957 Nag 83, wherein the learned Judges held that a revision dismissed in default could be restored to file under inherent powers. The learned Judges dissented from the view expressed by Byers J. in [A. Ramamurthi Iyer and Others Vs. T.A. Meenakshisundarammal and Another](#), and approved of the view as expressed in [Kanshi Ram Vs. Mt. Dharmi and Another](#). In this connection it may also be noted that there is a specific rule in the Rules framed by the Nagpur High Court for restoration of a revision dismissed in default. It is Rule 12 of Chapter 4, Part I of the High Court Rules, which is as follows:-

All petitions made to this Court for restoration to file Civil Revisions dismissed for default by this Court will be treated as prima facie made without such diligence as ought ordinarily to be shown to entitle the Petitioner to the relief, if the period from the date of the order which revision is sought to the date on which the petition is made excluding the time properly spent in obtaining any copy required to be submitted with the petition is

more than 30 days.

However, the Learned Counsel for the Respondents urged that, although there is a rule about restoration to file of a revision petition dismissed in default, there is no similar rule for setting aside an ex-parte order passed in a civil revision. Therefore, the contention is that this Court has no jurisdiction to set aside an ex parte order. In my opinion, a resort to exercise of inherent powers would be necessary to meet such a situation; otherwise we are led to the anomalous situation created by the view as expressed by Byers J. in *A. Rirnxmwrti Iyer and Ors. v. T.A. Meenakshisundarammil and Anr.* (Supra), as this Court would have the power to do damage to a party, but would be supposed not to undo it. It is here that the provisions of Section 21 of the M.P. General Clauses Act, 1957 or Section 21 of the General Clauses Act, 1897 could be invoked. I may reproduce both the sections:-

Central Act, Section 21. Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred then this power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued." State Act, Section 21 "Power to make to include power to add, to amend, vary or rescind orders, etc. Where, by any Madhya Pradesh Act a power to issue notifications, orders, rules or bye-laws is conferred then that power includes a power, exercisable in like manner and subject to the like sanctions and conditions, if any, to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Therefore, u/s 21 of the Central enactment as also the State enactment, the general principle laid down is that in respect of notifications, orders, rules or bye-laws, the power to do would also include the power to undo. Therefore, invoking the principle of Section 21 of the said Acts, it would be clear that if the High Court has the power to dismiss a revision petition in default, it would certainly have the power to undo the damage to a party in exercise of the same power in which the revision petition was dismissed.

In [Kanai Lall Shaw Vs. Bhattu Shaw](#), a Division Bench had to consider the question of sufficient cause under Order 9, Rule 9, Code of Civil Procedure. In that case, the attorney's name was wrongly printed in the Court's peremptory cause list and due to that the suit came to be dismissed in default. The learned Judges constituting the Division Bench held that that would constitute sufficient cause for the party's failure to appear at the hearing. This case, in my opinion, will strictly govern the situation in the present case.

I may also refer to the observations made by my learned brother, Newaskar J. in [Gulam Ali Bohara Vs. Vishwanath Balwant Mahakal](#), wherein the learned Judge held that a revision petition dismissed in default could be restored to file, if there be sufficient cause for non-appearance. That could be done in exercise of inherent powers, and particularly in view of Rule 12 of Chapter 4 of Part I of the High Court Rules. The learned Judge considered the case law exhaustively and dissented from the view of the Madras High

Court as expressed in a series of cases, namely, Subbamma v. Venkata Reddy AIR 1943 Mad 260, [A. Ramamurthi Iyer and Others Vs. T.A. Meenakshisundarammal and Another](#), and [The Fire Stone Tyre and Rubber Co. of India Ltd. Vs. T.S. Ramanuja Aiyangar](#), . It may be true that the view taken by the Madras High Court is contrary. But so far as this Court is concerned, there is a Division Bench case of this Court, namely, Dhondiba Appasaheb and Anr. v. Wasudeo Anant Sherlekar and Anr. 1956 N L J 677 : 1966 MPLJ 117 : AIR 1957 Nag 83 and the view of Newaskar J. is in accord with the same. of course, those two cases may be in connection with restoration of a revision petition dismissed in default. But the same principle can usefully be applied to a case of setting aside of an ex parte order passed in a revision petition.

To conclude, I am of opinion that the present petition for setting aside the ex parte order is tenable. Moreover, there being sufficient cause, I set aside the order and further direct that Civil Revision No. 550 of 1962 be heard on merits. However, under the circumstances, there shall be no order as to costs of this proceeding.