(2005) 01 AP CK 0051

Andhra Pradesh High Court

Case No: CRP No. 4140 of 2004

Shaik Abdul Haq		APPELLANT
	Vs	
Aiswarya Nilaya Chit Fund Pvt. Ltd. and Others		RESPONDENT

Date of Decision: Jan. 24, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 102, 115
- Constitution of India, 1950 - Article 226, 227

Citation: (2005) 3 ALD 513 : (2005) 3 ALT 676 : (2005) 4 BC 70 : (2005) 3 RCR(Civil) 161

Hon'ble Judges: D.S.R. Varma, J

Bench: Single Bench

Advocate: K. Rathangapani Reddy, for the Appellant; J. Janakirami Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.S.R. Varma, J.
Heard both sides.

2. This civil revision petition filed under Article 227 of the Constitution of India is directed against the judgment and decree, dated 31-5-2004, passed by the IV Additional District Judge, Kurnool, partly allowing the appeal in A.S. No. 23 of 2003, setting aside the judgment and decree, dated 12-9-2002, passed by the II Additional Junior Civil Judge at Kurnool, in O.S. No. 1376 of 2001 and decreeing the suit with proportionate costs of Rs. 13,237/-.

3. The petitioner is the first defendant, the first respondent is the plaintiff, the second, third and fourth respondents are the Defendants 2 to 4 in the suit.

4. For the sake of convenience, the parties will be referred to as per their array in the suit.

5. The only question that falls for consideration in the present civil revision petition filed under Article 227 of the Constitution of India is - as to whether a civil revision filed under Article 227 of the Constitution of India is maintainable against the judgment and decree passed by the first Appellate Court despite the specific bar contained in Section 102 of the Code Civil Procedure which ordains that no second appeals would lay if the value of the subject-matter does not exceed Rs. 25,000/-?

6. The undisputed facts are that the plaintiff had filed the suit for recovery of money in a transaction. It appears that the transaction was not denied. It also appears that the plaintiff had admitted that certain amounts were paid towards the instalments. However, the Trial Court dismissed the suit.

7. Feeling aggrieved by the said judgment and decree, dated 12-9-2002, passed by the Trial Court, the plaintiff carried the matter in appeal in A.S. No. 23 of 2003 and the lower Appellate Court after considering the entire material, including the evidence, both oral and documentary, available on record, partly allowed the appeal and decreed the suit for a sum of Rs. 13,237/- taking into account the amounts admittedly paid by the defendants. Challenging the said judgment and decree of the lower Appellate Court, the present civil revision petition has been preferred by the plaintiff under Article 227 of the Constitution of India.

8. The suit claim, which is the subject-matter of the appeal before the lower Appellate Court and the present civil revision petition, remains to be less than Rs. 25,000/-precisely Rs. 13,237/-.

9. It may be noted that Section 102 of the CPC provides that no second appeal would lay if the value of the subject-matter is less than Rs. 25,000/-.

10. The first contention of the learned Counsel for the 1st defendant is that though Section 102 of the CPC explicitly prohibits filing of a second appeal if the value of the subject-matter is less than Rs. 25,000/-, the judgment and decree of the first Appellate Court can be canvassed by any party to the suit under Article 227 of the Constitution of India.

11. The second contention of the learned Counsel for the first defendant that having regard to the fact that in terms of the amendment made to Section 115 of the CPC by Act 46 of 1999, the High Court can entertain the revision petition against the judgment and decree of the first Appellate Court, exercising its jurisdiction under Article 227 of the Constitution of India. Thus contending he relies on the decisions of the Apex Court in Yeshwant Sakhalkar and Another Vs. Hirabat Kamat Mhamai and Another, and AIR 1975 1297 (SC) .

12. The third contention of the learned Counsel appearing on behalf of the 1st defendant that basing on the calculation memo filed by the plaintiff, the suit was

decreed in part and the other evidence was not properly appreciated by the lower Appellate Court. Therefore, this Court can invoke the supervisory jurisdiction under Article 227 of the Constitution of India and interfere with the impugned judgment and decree.

13. In other words, according to the learned Counsel for the 1st defendant since the lower Appellate Court did not exercise its jurisdiction properly, though a second appeal is explicitly barred u/s 102 of the Code of Civil Procedure, a revision petition under Article 227 of the Constitution of India is maintainable.

14. The learned Counsel appearing on behalf of the first plaintiff submits that the present civil revision petition is not maintainable inasmuch as, this Court while exercising supervisory jurisdiction cannot reappreciate the evidence or correct the errors in drawing inferences like as is permissible to be done be the Appellate Court and hence the present revision petition under Article 227 of the Constitution of India is liable to be dismissed. To buttress his submissions, he placed strong reliance upon the judgment of the Apex Court in Ranjeet Singh v. Ravi Prakash 2004 AIR SCW 4221.

15. In Yeshwant Sakhalkar v. Hirabat Kamat Mhamai (supra), the Apex Court observed as thus:

The question as to whether the application of Article 227 of the Constitution of India could be maintainable or not has been answered by this Court in Surya Dev Rai v. Ram Chander Rai wherein it was held: (SCC pp.694-96, Para 38)

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Article 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which does not have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step into exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby;

(6) A patent error is an error which is self-evidence, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn progress of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court indicates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and, the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a large stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lts.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the

act, order or proceedings of the subordinate Courts but cannot substitute its own decision in pace thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case."

16. It is also pertinent to notice the observations made by the Apex Court, at Paragraphs Nos. 7 and 8, in Babhutmal v. Laxmibai (supra), which run thus:

The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It well settled by the decision of this Court in Waryam Singh and Another Vs. Amarnath and Another, that the:

".....power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

This statement of law was quoted with approval in a subsequent decision of this Court in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, and it was pointed out by Sinha, J., as he then was, speaking on behalf of the Court in that case:

"It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the Tribunal functions within the limits of its authority."

It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate Court or Tribunal. Its function is limited to seeing that the subordinate Court or Tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. What Morris, L. J., said in Rex v. Northumberland Compensation Appeal Tribunal, 1952 (1) All.ER 122, in regard to the scope and ambit of certiorari jurisdiction must apply equally in relation to exercise of jurisdiction under Article 227. That jurisdiction cannot be exercised:

"as the cloak of an appeal in disguise. It docs not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings."

If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a Superior Court can do in exercise of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate Court or Tribunal final on facts.

8. Here, when we turn to the judgment of the High Court, we find that the High Court has clearly misconceived the scope and extent of its power under Article 227 and overstepped the limits of its jurisdiction under that Article. It has proceeded to reappreciate the evidence for the purpose of correcting errors of fact supposed to have been committed by the District Court. That was clearly impermissible to the High Court in the exercise of its jurisdiction under Article 227. The District Court was the final Court of fact and there being no appeal provided against the findings of fact reached by the District Court, it was not open to the High Court to question the propriety or reasonableness of the conclusions drawn from the evidence by the District Court. The High Court could not convert itself into a Court of appeal and examine the correctness of the findings of fact arrived at by the District Court. The limited power of interference which the High Court possessed under the Article 227 was to see that the District Court functions within the limits of its authority and so far as that was concerned, there was no complaint against the District Court that it transgressed the limits of its authority. It is true that the High Court claimed to interfere with the findings of fact reached by the District Court on the ground that the District Court had misread a part of the evidence and ignored another part of it but that was clearly outside the jurisdiction of the High Court to do under Article 227.

17. From a perusal of the judgments Yeshwant Sakhalkar v. Hirabat Kamat Mhamai and Babhutmal v. Laxmi Bhai (supra), relied upon by the learned Counsel appearing on behalf of the plaintiff, the consistent view of the Apex Court conspicuously appears to be - - firstly that when the Trial Court passes as interlocutory order, notwithstanding, an embargo u/s 115 of the Code of Civil Procedure, if patent error, which is self evident, is found under the following circumstances:

Firstly; against the interlocutory orders, passed by the Courts subordinate to the High Court, against which a remedy of revision is excluded by the CPC Amendment Act 46 of 1999 are nevertheless are open to be challenged before the High Court, which has supervisory jurisdiction.

Secondly; the object of exercising supervisory jurisdiction under Article 227 of the Constitution of India is to keep the subordinate Courts within the bounds of their jurisdiction or in cases where subordinate Courts refuse to exercise their jurisdiction or assume jurisdiction where there is no jurisdiction at all; and

Thirdly; where a patent error is self-evident, which can be perceived or demonstrated without going into any lengthy or complicated argument or a long-drawn process of reasoning, the same can be interfered with under Article 227 of the Constitution of India and most importantly the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence on record or to correct the errors, if any, in drawing inferences.

18. The above observations of the Apex Court, noted herein, are only few in the context of the present case among many guidelines carved out by the Apex Court.

19. Sri. V.L.N.G.K. Murthy, Amicus Curiae, appointed to assist this Court, relies on the judgment of the Apex Court in Surya Dev Rai v. Ram Chander Rai and Ors., 2003 (5) ALD 36 (SC) = 2003 (5) Supreme 390.

20. The Apex Court in Yeshwant Sakhalkar v. Hirabat Kamat Mhamai (supra), referred to the observations made by it in Surya Dev Rai v. Ram Chander Rai and Ors., Since the said observations were already extracted, the same need not be extracted once again.

21. In Ranjeet Singh v. Ravi Prakash, 2004 AIR SCW 4221, the Apex Court observed as under:

..... A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the Appellate Court. Though not specifically stated, the phraseology employed by the High Court in its judgment, goes to show that the High Court has exercised its certiorari jurisdiction for correcting the judgment of the Appellate Court. In Surya Dev Rai Vs. Ram Chander Rai and Others, , this Court has ruled that to be amenable to correction in certiorari jurisdiction, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. An error which needs to be established by lengthy and complicated arguments or by indulging into a long drawn process of reasoning, cannot possibly be an error available for correction by writ of cerliorari. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or the other, cannot be called a patent error. As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution also, it has been held in Surya Dev Rai (supra) that the jurisdiction was not available to be exercised for indulging into re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that "considering the evidence on record carefully" it was inclined not to sustain the

judgment of the Appellate Court. On its own showing, the High Court has acted like an Appellate Court which was not permissible for it do under Article 226 or Article 227 of the Constitution."

22. In the instant case, it is to be seen that the value of the subject-matter of appeal, after passing of partial decree by the lower Appellate Court, is less than Rs. 25,000/-. Therefore, the present civil revision petition is attracted by Section 102 of the Code of Civil Procedure, which created a clear bar postulating that no second appeal would lay from any decree, when the subject-matter of the original suit is for recovery of money not exceeding twenty five thousand rupees. The Legislature enacted Section 102 CPC with the clear and obvious object of reducing the scope of the litigation and to give quietus to the Same.

23. Furthermore, if the present civil revision petition is entertained under Article 227 of the Constitution of India, it amounts to exercising the appellate jurisdiction, which was prohibited by the Apex Court by way of guidelines in the judgments referred to supra.

24. That apart, the judgment under challenge is not an interlocutory order. Further, the judgment under challenge, as already noticed, is final and rendered by the lower Appellate Court.

25. For the foregoing reasons, without going into the merits of the case, and in view of the specific and unambiguous language contained in Section 102 of the Civil Procedure Code, I have to hold that the remedy available to the petitioner is to file a second appeal, if so advised, and the present civil revision petition filed under Article 227 of the Constitution of India is not maintainable. Therefore, this civil revision is liable to be dismissed.

26. Subject to the above observation, the civil revision petition is dismissed, at the stage of admission. However, there shall be no order as to costs.