Jaleel Khan Vs M. Kamalamma

Court: Andhra Pradesh High Court

Date of Decision: July 13, 2001

Acts Referred: Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 â€" Section 20, 22
Civil Procedure Code Amendment Act, 1978 â€" Section 3
Civil Procedure Code, 1908 (CPC) â€" Section 115
Constitution of India, 1950 â€" Article 227
Provincial Small Cause Courts Act, 1887 â€" Section 25

Citation: (2001) 5 ALD 610 : (2001) 5 ALT 595 : (2001) 2 APLJ 132

Hon'ble Judges: T. Ch. Surya Rao, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Mr. Vedula Srinivas, for the Appellant; Mr. N.V.S.R. Gopala Krishna Chari, for the Respondent

Judgement

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T. Ch. Surya Rao, J.
This reference has been made for adjudication by a Division Bench on a vital point as to whether a revision petition

filed u/s 115 of the CPC be converted into a petition under Article 227 of the Constitution.

2. The factual matrix germane for brevity and better understanding of the matter and for effective adjudication of the same may be set forth

hereunder thus:

The landlord-petitioner filed RC No. 209 of 1998 seeking eviction of the tenant from the demised premises on the premise that the tenant

committed wilful default in paying the rents. That was resisted by the tenant denying the title of the landlord and setting up the title in himself. While

the landlord-petitioner claimed that she purchased the demised premises along with another property under a registered sale deed from her vendor,

who in turn said to have purchased the same in her name; the plea of the respondent-tenant was that the demised premises was gifted to him by the

husband of the vendor of the landlord-petitioner. During the course of enquiry in the eviction petition, the vendor of the landlord-petitioner was

examined as PW1, in proof of title of the landlord-petitioner over the demised premises. The chief-examination was done on 23-4-1999 and the

matter was adjourned to 28-4-1999 for cross- examination on the side of the tenant-respondent. Thereafter, the matter underwent four

adjournments including a couple of adjournments on payment of costs of Rs. 25/-. When the matter stood adjourned to 9-6-1999 for payment of

costs of Rs. 25/- for the second time and for proceeding with the cross-examination of PW1, neither the tenant nor his Counsel was present. The

learned Rent Controller, therefore, passed an order forfeiting the right of the tenant to cross-examine the witness.

3. On 21-6-1999, the tenant filed IA No. 267 of 1999 seeking to set aside the order dated 9-6-1999 forfeiting the right of cross-examination. In

that petition, inter alia, the tenant sought to explain the reason for his default on 9-6-1999 on the premise that the date of adjournment was

recorded as 19-6-1999 by his Counsel instead of 9-6-1999. The explanation was not found favoured with and in sequal thereto, the learned Rent

Controller dismissed, as aforesaid IA No. 276 of 1999.

4. Having been aggrieved by the same, the tenant sought to file the Civil Revision Petition No. 3680 of 1999 u/s 115 of the CPC ("the Code" for

brevity). On an objection take by the learned Counsel appearing for the landlord about the maintainability of the said civil revision petition u/s 115

of the Code realising that in view of the specific provision envisaged by the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 ("the

Act" for brevity) conferring the revisional jurisdiction on the High Court, Section 115 of the Code has no application and as the impugned order,

which is an interlocutory order, has not been covered by Section 22 of the Act; the tenant sought to convert the Civil Revision Petition No. 3680

of 1991 as a petition under Article 227 of the Constitution of India.

5. Again that application was resisted by the landlord on the ground that such an application was not permissible placing reliance upon three

judgments of this Court rendered by three learned single Judges and a judgment of the Apex Court in Vishesh Kumar Vs. Shanti Prasad, .

6. Having regard to the fact situation in this case and after having perused the judgment of the Apex Court referred to supra, while respectfully

differing with the views expressed by the three learned single Judges of this Court, one of us (TCSR, J) referred the matter to a Bench to have a

fresh look at the legal position. That is how, as aforesaid, the matter has come up before us for adjudication.

7. It is obvious that the order passed by the learned Rent Controller in an interlocutory application filed by the tenant in IA No. 267 of 1999

refusing to set aside the earlier order passed by her forfeiting the right of cross-examination, falls within the realm of an interlocutory order. The

tenant who is aggrieved by the said order seeks to assail the same. The Act is a self-contained Code and has conferred a right of appeal on the

aggrieved parities and has also clearly envisaged the revisional jurisdiction. Sections 20 and 22 of the Act are the two provisions, which are

germane for consideration in this regard. Section 20 of the Act insofar as is relevant for the present purpose reads as under:

Appeal:--(1) Any person aggrieved by an order passed by the Controller may, within thirty days, from the date of such order, prefer an appeal in

writing to the Chief Judge, Small Causes Court in the cities of Hyderabad and Secunderabad and elsewhere to the Subordinate Judge or if there

are more than one Subordinate Judge, to the Principal Subordinate Judge having original jurisdiction over the area aforesaid. In computing the said

period of thirty days the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) x x x x

(3) x x x x

(4) x x x x

8. A mere perusal of the said provision shows that an appeal lies against an order passed by the Rent Controller to the appellate forum. There has

been no ostensible indication in the said section restricting the right of appeal to a particular kind of order. However, the Apex Court in Central

Bank of India Vs. Shri Gokal Chand, , dealing with the provisions of the Delhi Rent Control Act held thus:

In the context of Section 38(1) the words "every order of the Controller made under this Act", though very wide, do not include interlocutory

orders, which are merely procedural and do not affect the rights or liabilities of the parties and in a pending proceeding, the Controller may pass

many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection

of documents, issue of a commission for examination of witnesses, inspection of premises, a date of hearing and the admissibility of a document or

the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the

prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The

Legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders.

9. Following the said judgment, a Bench of this Court in Chaganlal (died) Sardarilal v. N. Pershad 1972 (1) APLJ 343, while interpreting Section

20 of the Act held that no appeal could be maintained against an interlocutory order passed by the learned Rent Controller. Thus, in view of the

authoritative pronouncement of the Apex Court in Central Bank of India Limited"s case (supra) and in view of a Bench judgment of this Court

rendered directly under the provisions of the Act, following the judgment of the Apex Court, the legal position is obvious that no appeal could be

maintained u/s 20 of the Act assailing an interlocutory order passed by the Rent Controller, which order is merely regulates the procedure and

docs not affect the rights or liabilities of the parties.

10. Section 22 of the Act confers revisional jurisdiction upon the High Court. Section 22 of the Act insofar as is relevant for the present purpose

reads as under:

Revision :--(1) The High Court may, at any time, on the application of an aggrieved party, call for an examine the records relating to any order

passed or proceeding taken under this Act by the Controller in execution u/s 15 or by the appellate authority on appeal u/s 20, for the purpose of

satisfying itself as to the legality, regularity or of propriety of such order or proceeding and may pass such order in reference thereto as it thinks fit.

(2) x x x x

11. It is manifest that the revisional jurisdiction conferred upon the High Court is restricted to an order passed by the appellate Court and an order

passed by the Rent Controller in execution proceedings. Therefore, no revision lies against an interlocutory order passed by the Rent Controller

pending the main proceedings in view of the clear legal position, as discussed by us supra. The aggrieved party can neither maintain an appeal, nor

can he assail the said order by preferring any revision against the same.

12. Inasmuch as the Act is a self-contained Code and has clearly envisaged the revisional jurisdiction, obviously the provisions u/s 115 of the Code

cannot be invoked. In view of the peculiar situation obtaining in this case, the party aggrieved cannot be said to have no remedy at all. Although the

Act excludes the applicability of the provisions of Section 115 of the Code, it cannot take away the right ofan individual to approach the High

Court under Article 227 of the Constitution of India.

13. It is now beyond controversy that the High Court can exercise revisional jurisdiction over the Tribunals and Courts. Even otherwise, in view of

the authoritative pronouncements of the Apex Court in Shama Prashant Raje Vs. Ganpatrao and Others, , and in The Industrial Credit and

Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, , the supervisory jurisdiction of the High Court cannot be doubted

over the Tribunals and the Courts. Hence, the aggrieved party can clearly approach the High Court under Article 227 of the Constitution of India

assailing the order passed by the learned Rent Controller in an interlocutory application when he has no remedy either u/s 20 or u/s 22 of the Act.

Had the tenant approached this Court under Article 227 of the Constitution of India initially assailing the order dated 5-7-1999 passed in IA No.

267 of 1999, there would not have been any controversy at all. Because he sought to approach this-Court u/s 115 of the Code in the first instance

and in the wake of a tenable objection raised by the adversary, he had to seek conversion of his application; so as to avoid unnecessary delay and

expenditure.

14. Whether a petition filed u/s 115 of the Code can be converted into a petition under Article 227 of the Constitution of India in ordinary course

is the next question for determination?

15. In Dulhin Sona Kuer v. Jamil Ahmed, Vol. 48 Indian Cases 779, a Full Bench of the Patna High Court held as under:

The High Court has jurisdiction, in the exercise of its inherent powers u/s 115 of the Civil Procedure Code, to condone in special cases the

misapplication of the provisions of the Code, if the provisions of the law as regards limitation and Court-fee are complied with. The High Court has

authority to convert an application for revision into a memorandum of appeal.

16. In Sarat Krishna Bose Vs. Bisweswar Mitra and Others, , a Bench of the Calcutta High Court held as follows:

When an application under Order 9, Rule 9, for restoration of the suit is dismissed for default under Rule 4 of that order, no application lies under

Order 9, Rule 9, for setting aside that order of dismissal and for restoration and re-hearing for the former application under Order 9, Rule 9, but

the second application may be treated as an application to restore the suit itself and not to restore the first application, and if it is within time, there

can be no bar to its being dealt with an application under Order 9, Rule 9 Civil PC.

17. In Shivaprasad Singh v. Prayagkumari Debee ILR(1934) Cal. 711 at page 785, a Bench of the Calcutta High Court held thus:

There is, of course, the inherent power, which the Code has reserved to every Court, u/s 151 to make such orders as should be made ex debit

justitiae, and every Court should have in view the shortening of litigation preventing duplication of proceedings and saving the parties from

harassment and expense. And delay by itself, is not sufficient to deprive a party of his remedies, if such delay does not amount to waiver,

acquiescence of abandonment of his claim or has not created a corresponding right in his opponent on extinguishments of his own.

The Supreme Court in V.C. Shukla Vs. State through C.B.I., , held as follows:

Apart from the revisional power, the High Court under the Code of 1908 possessed an inherent power to pass orders ex debito justitiae in order

to prevent abuse of the process of the Court. This was a special power which was to be exercised by the High Court to meet a particular

contingency in not expressly provided for in the Code of Criminal Procedure Code.

18. Although the above decision came to be rendered under the provisions of Criminal Procedure Code, nonetheless, the principle is the same,

where either the CPC or the Criminal Procedure Code saves certain inherent powers of the Court. An inherent power of the Court is not a power

conferred on the High Court by either of these Codes. It inheres in the Court to meet certain contingencies. The Code only saves those powers.

19. The Apex Court in Smt. Nandarani Mazumdar Vs. Indian Airlines and Others, , held that a suit can be treated as an execution application as a

measure of ex debito justitiae.

20. Thus, we see conversion in appropriate cases is permissible so as to avoid unnecessary delay, inconvenience and expenditure, and in certain

cases to save the limitation, as has been done in Nandarani Mazumdar''s case (supra).

21. Apropos the legal bar for such conversion, much reliance has been placed by the learned Counsel for the petitioner upon the judgment of the

Apex Court in Vishesh Kumar ''s case (supra). It is expedient here therefore to understand the said judgment of the Apex Court. That was a case

where there had been a bifurcation of revisional jurisdiction u/s 115 of the Code in view of Section 3 of the Code (U.P. Amendment Act, 1978).

In view of the State amendment to Section 115 of the Code, the trial Court alone had jurisdiction u/s 115 in cases arising out of Original Suits or

other proceedings of the value of Rs. 20,000/- and above; and the District Court alone has jurisdiction u/s 115 of the Code in any other case. The

High Court has jurisdiction u/s 115 in respect of cases arising out of original suits or other proceedings of any valuation decided by the District

Court. The matter therein arose out of the provisions of the Provincial Small Cause Courts Act, 1920. u/s 25 of the said Act, as amended, the

District Judge became the repository of revisional power instead of High Court against any order passed by the Court exercising original

jurisdiction under the Provincial Small Cause Courts Act and as against the matters decided by the District Judge or the Additional District Judge

exercising the jurisdiction of a Judge of Small Cause Court, the power of revision would vest in the High Court.

22. Two questions arose for consideration before the Apex Court in the context - (1) Whether the High Court vests revisional jurisdiction u/s 115

of the Code in respect of an order of the District Court u/s 115 of the Code disposing of a revision petition? and (2) whether the High Court

possesses the revisional jurisdiction u/s 115 of the Code against an order of the District Court u/s 25 of the Provincial Small Cause Courts, Act,

1920, disposing of a revision petition?

23. After having reviewed the legal position with reference to the U.P. Amendment Acts, both to the CPC as well as the Provincial Small Cause

Courts Act, 1920, the Apex Court held in paras 15 and 19 as under:

15. We are of the opinion on the first question that the High Court is not vested with revisional jurisdiction u/s 115, Code of Civil Procedure, over

a revisional order made by the District Court under that section.

19. Accordingly, we hold that an order passed u/s 25, Provincial Small Cause Courts Act by a District Court is not amenable to the revisional

jurisdiction of the High Court u/s 115, Code of Civil Procedure.

24. When the Apex Court decided both the points in the negative, it had been urged before it that the case should be remitted to the High Court

for consideration as a petition under Article 227 of the Constitution of India. In the context, it was held in para 22 as under:

''We are unable to accept that prayer. A revision petition u/s 115 is a separate and distinct proceeding from a petition under Article 227 of the

Constitution, and one cannot be identified with the other.

Inasmuch as a concurrent revisional jurisdiction has been conferred upon the District Court and the High Court by the U.P. State Amendment Act

to the CPC as against the order passed by the District Court exercising revisional jurisdiction, the High Court cannot entertain a revision and when

the High Court cannot entertain its revisional jurisdiction under the Code, it cannot exercise its supervisory jurisdiction under Article 227 of the

Constitution of India for the self-same reason. Under the circumstances, that was not a clear case where an application filed u/s 115 of the Code

was sought to be converted into a petition under Article 227 of the Constitution of India so as to see whether such a conversion is permissible. As

the revisional jurisdiction has already been exercised by one Court having concurrent jurisdiction along with the High Court, the Apex Court did

not accede the request for such conversion.

25. The above decision, therefore, cannot be understood to mean that a revision petition u/s 115 of the Code cannot be permitted to be converted

into a petition under Article 227 of the Constitution of India. The observations made by the Apex Court while parting with the matter cannot be

read in isolation and it is expedient to understand the rationale behind it by taking a holistic view of the entire case.

26. There can be no second revision over an order passed exercising revisional jurisdiction, notwithstanding the fact that the former order passed

by the Court exercising revisional jurisdiction is a Court inferior to the High Court. A fortiori when that inferior Court had concurrent revisional

jurisdiction along with the High Court. It was not a simple case where the High Court lacks revisional jurisdiction u/s 115 of the Code. But it was a

case where a second revision would be maintained or not in view of the concurrent jurisdiction to the High Court and the District Court.

Furthermore there has been no ratio involved in that case and in deed has not been decided by the Apex Court. Therefore it cannot be a precedent

as held by the Apex Court in Arnit Das Vs. State of Bihar, , thus:

A decision not expressed, not accompanied by reasons and not proceeded on a conscious consideration of an issue cannot be deemed to be a

law declared to have binding effect as is contemplated by Article 141. That which escaped in the judgment is not the ratio decidendi. This is the

rule of sub silentio, in the technical sense when a particular point was not consciously determined.

27. In our considered view, therefore, there is no legal bar and the contention of the learned Counsel appearing for the landlord that the conversion

of the revision petition filed u/s 115 of the Code into a petition under Article 227 of the Constitution of India is not permissible, merits no

consideration.

28. Placing reliance upon Vishesh Kumar"s case (supra), a learned single Judge of this Court in Nallamilli Satyanarayana Reddy v. Tadi Venkata

Reddy 1997 (4) ALD 684, has come to a conclusion that a petition filed u/s 115 of the Code cannot be converted into one under Article 227 of

the Constitution of India. That was a case where as against the judgment of the appellate forum under Andhra Tenancy Act a revision was sought

to be filed u/s 115 of the Code. Later in was sought to be converted into a petition under Article 227, of the Constitution. Following the said

judgment and the judgment of the Apex Court again in Md. Kutubuddin Vs. Bhaikar Raja Mitraji Anand Kumar and others, , another learned

single Judge has taken the same view. This decision was rendered under the provisions of the Act. When a revision petition filed against the orders

of the appellate forum in rent control proceedings sought to be converted it was held not permissible. Again in Oriental Insurance Company

Limited Vs. Sunnapu Govindamma and others, , a learned single Judge of this Court has taken a similar view. That judgment has been rendered

under the provisions of the Motor Vehicles Act, 1988. The basis for all these decisions was Visesh Kumar "s case (supra).

29. In view of the clear legal position the judgments rendered by this Court referred to supra are no more good law.

30. It is further made clear that we are only dealing with the matter regarding conversion of a petition originally filed u/s 115 of the Code into a

petition under Article 227 of the Constitution of India and for reasons given above we hold that it is permissible. But, whether in the facts of this

case a petition under Article 227 would be maintainable or not is a question, which will have to be decided by the Court after conversion. Any

observations made should not be taken as an expression of opinion that every order passed at the interim stage by the Rent Controller is

challengeable under Article 227.

31. For the foregoing reasons, we are of the considered view that in appropriate cases where the fact situation warrants a petition filed u/s 115 of

the Code can be converted into a petition under Article 227 of the Constitution of India on the principle of ex debito justitiae. The reference is

answered accordingly.