Loke Nath Mueherjee Vs Sueasona Sadhurhan

Court: Calcutta High Court

Date of Decision: June 29, 1959

Acts Referred: Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 â€" Section 21(1)(a)

Citation: 63 CWN 812

Hon'ble Judges: P.N. Mookerjee, J; Law, J

Bench: Division Bench

Advocate: Manindra Nath Ghosh and Saurendra Nath Roy Choudhury, for the Appellant; Sanat K. Mukherjee and Amiya Lal Chatterjee, for the Respondent

Judgement

P.N. Mookerjee, J.
This appeal is now before us on the preliminary point of jurisdiction. The appeal arises out of a suit for, inter alia,

specific performance of a contract to execute and register a deed of mortgage for a principal sum of Rs. 5,343/-. The suit was filed in or about the

year 1952. It was registered as Title Suit No. 50 of 1952 of the Second Court of the Subordinate Judge of Hooghly. The suit was valued at Rs

5,343/- and it was eventually dismissed by the learned Subordinate Judge on April 10, 1958, by his judgment and decree of that date, the decree

being actually signed on April 19, 1958 Against the above decree of dismissal, the present appeal was filed by the plaintiff in this Court on May

30, 1958. The respondents, after entering appearance in the appeal, took a preliminary objection to the maintainability of the same in this Court in

view of the new Amending Act (West Bengal Act XVI of 1957-the Bengal, Agra and Assam Civil Courts (West Bengal Amendment) Act 1957,

which had come into force on January 1, 1958, and, by which, he Bengal, Agra and Assam Civil Courts Act, 1887, or, to be more exact. Sec. 21

thereof, was amended by changing or altering the forum of appeal from decisions (decrees or orders) of Subordinate Judges in suits, valued

between Rs. 5,000/- and Rs. 10,000/-from this Court to the District Judge, and the respondent contended that, under the said amending statute,

the appeal in the present case would lie not to this Court but to the District Judge and so it was not entertainable by this Court, and not

maintainable here. As the question was one of some importance and as it was likely to arise -and, as a matter of fact, had already arisen-in a

number of cases, we directed the appeal to be put up for hearing on the above preliminary point and the matter was heard by us on April 7, 1959,

when we reserved orders with a direction to the parties to produce some official papers, relating to the statute in question, that is, the amending

W.B. Act XVI of 1957, for enabling us to consider the whole matter in the light of the arguments, addressed to us. These papers could not be

given to us before about the middle of May, 1959, and, as, meanwhile, some other cases had come up before us for consideration-and had

actually been heard-on the same point, in one or two of which the point was even more fully and elaborately argued and the last of which was

heard in the beginning of this month, we took time for consideration and this judgment could not be pronounced earlier.

2. The point at issue depends upon the construction of the new Amending Act, or, more precisely, of sec. 4 thereof. That section (Sec. 4) runs as

follows:

Nothing in this Act shall apply to or affect any appeal from any decree or order passed before the commencement of this Act.

3. For the purpose of ascertaining the true import and effect to this section, it is necessary to set out the Amending Act itself, which consists only of

four sections, including the said sec. 4, as quoted hereinbefore.

4. The Act is intituled ""An Act to amend the Bengal, Agra and Assam Civil Courts Act, 1887"" and it is styled as the ""West Bengal Act XVI of

1957 -The Bengal, Agra and Assam Civil Courts (West Bengal Amendment) Act, 1957"". It was passed by the West Bengal Legislature in the

year 1957 and received the assent of the President, which was published in the Calcutta Gazette Extra-Ordinary of August 29, 1957. Starting with

its short preamble, the amending Act, runs as follows:

Whereas it is expedient to amend the Bengal, Agra, and Assam Civil Courts Act, 1887, in its application to West Bengal for the purpose and in

the manner hereinafter appearing;

It is hereby enacted in the Eighth Year of the Republic of India, by the Legislature of West Bengal, as follows:

1. (1) This Act may be called the Bengal, Agra and Assam Civil Courts (West Bengal Amendment) Act, 1957.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. The Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the said Act), shall, in its application to West Bengal, be

amended for the purpose and in the manner hereinafter mentioned

3. In clause (a) of Subsection (1) of section 21 of the said Act, for the words "five thousand rupees" the words "ten thousand rupees" shall be

substituted.

5. The Act then concludes with sec. 4, which we have already quoted above.

6. Sec. 21 of the old Act which was altered or amended by sec. 3 as aforesaid, was, to quote its material part, as follows:

Sec. 21(1)

An appeal from a decree or order of Subordinate Judge shall lie-

(a) to the District Judge where the value of the original suit, in which or in any proceeding, arising out of which, the decree or order was made, did

not exceed Rs. 5,000/-, and

(b) to the High Court in any other case.

7. If the amending Act had stopped with the first three sections, as quoted hereinbefore, there would not have been any or the least difficulty in

determining its scope and effect, so far as such determination was necessary and/or relevant for purpose of the above preliminary objection. It

was, undoubtedly, an Act, touching or affecting the forum, if not the right, of appeal and, accordingly in accordance with well-established principles

(Vide, in particular, the Colonial Sugar Refining Co. Ltd. v. Irving (1) (1905) A.C 369), the amendment or the amending Act could not have

affected pending proceedings, namely, appeals, including the forum thereof, in suits which were pending, whether at the suit stage or at the appeal

stage or at the potential stage of appeal, that is, where the decree had been passed but the time for appealing had not yet expired, on the date of

coming into operation of the above amending Act. The difficulty, however, is created by the enactment of sec. 4, which we have quoted above,

and the point arises how far the above position is altered here by reason thereof or affected by the said section.

8. It is settled law and beyond controversy that the right of appeal-and there was included the right to appeal in a particular forum-is a substantive

right and can be affected or taken away only by express language or by necessary intendment or implication. Admittedly also, under the old law,

that is, prior to the above amending Act, the present appeal would have lain in this Court. Our task, therefore, is to find out whether there is

anything in the above sec. 4 which, either expressly or by necessary intendment or implication, affects or alters the above position.

9. Before proceeding further, we may say at once that there is nothing express in the amending Act-or in sec. 4 thereof-which directly applies it to

pending proceeding. But the contention is that, by necessary implication or intendment, sec. 4 attracts the Act to pending proceeding too, where

the decree or order appealed from, was passed on or after the enactment of the said Act and it is this contention which is of supreme and vital

importance here and requires careful consideration.

10. The suit in the present case was pending in the trial court on January, 1, 1958, when the amending Act came into force. The true enquiry will,

therefore, be, whether, in view of sec. 4, the new amending Act which admittedly, touches or affects the forum of appeal, would apply to and

affect pending proceedings notwithstanding the normal rule to the contrary and. as, in law, the word, ''pending'' embraces not only pendency at the

suit stage but also at the appeal stage, both actual and potential, as explained above, the matter will have to be considered from that broad point of

view.

11. Now sec. 4 provides that ""nothing in the amending Act will apply to or affect any appeal from any decree or order passed before the

commencement of the said Act."" That, indeed, would have been the position even without the section. Why then was the section (sec. 4) enacted

at all? The answer to this question will give us the necessary clue to the solution of the problem before us.

12. There are three possible points of view, from which the matter may be looked at, namely:

(1) That sec. 4 was redundant or unnecessary and superfluous.

(2) That sec. 4 was inserted only by way of abundant caution or to use the more familiar expression or expressions in that behalf, ex majore

cautela ex abundanti cautela, and its sole purpose was to emphasise what would have been the position even without it, or, rather, a particular

aspect of it, namely, that, if the decree or order had been passed before the commencement of the amending Act, the appeal therefrom would not

have been affected by the said amending Act; and

(3) That enactment of sec. 4 was to emphasise exclusion from the operation of the amending Act of appeals from decrees or orders, passed

before the commencement of the said amending Act, and to confine such exclusion only to such appeals, indicating and implying necessarily that

appeals in cases of other orders and decrees will be governed by the amending Act.

13. The first view will obviously have to be rejected as, according to well-settled rules or principles (canons) of construction of statutes, no part of

a statute should be held to be a surplusage or rejected as redundant or unnecessary or superfluous, or, to put it otherwise, should be repealed by

interpretation, unless otherwise an absurdity would result, and there is no question of any such absurdity here.

14. The contest, therefore, will lie between the two other joints of view as stated in (2) and (3) above. Of these, the theory of insertion by way of

abundant caution does not, in our opinion, apply to the present Case from the materials placed before us. we have not been able to discover any

particular or special circumstance or reason to explain sufficiently the insertion of this provision (sec. 4) ex abundanti cautela or by way of abundant

caution. The legislature must be presumed to have known the settled principle that, in the absence of express words or necessary intendment or

implication, a statute, seeking to alter the forum of appeal or to affect the right of appeal, would not be retrospective in operation and would not

apply to pending proceedings or to suits which had been instituted prior to its commencement and would not affect the same in any way

whatsoever, and we can find no conceivable reason where why it would have deemed it necessary to emphasise that aspect, and, there again, a

part only of it, by a specially inserted provision, unless its intention was that, except to that extent, the above principle would not apply.

15. We have, therefore, reached the conclusion that sec. 4 would have been wholly unnecessary-and somewhat unmeaning-and would not have

been inserted in the amending Act, if the intention of the legislature was that the said amending Act would not have any retrospective operation

whatsoever. On the other hand, it seems to us that, by enacting sec. 4 of the Act, the legislature was seeking to make a distinction between appeals

from decrees or orders, passed before the commencement of the amending Act, and those, passed on the date of its commencement or after it.

and that distinction was made irrespective of any question of pending proceedings. In other words, the emphasis was on the point of time of the

coming into operation of the new Act, the distinction being between pre-Act and post decrees or orders irrespective of the pendency of the

proceedings, in which they were made, at the date of commencement of the Act, except to the extent such emphasis may be involved in the above

distinction in its application to such proceedings. The necessary implication of sec. 4, would, therefore, be that the amending Act would apply to all

appeals from all orders or decrees, passed on or after the date of the commencement of the amending Act. no matter whether such decrees or

orders are passed in suits, instituted before or after such commencement. The broad distinction, adopted by the legislature was based on the point

of time, when the decree or order, from which the appeal in question is preferred, is passed, and, by expressly providing in sec. 4, that ""nothing in

the Act shall apply to or affect any appeal from any decree or order, passed before the commencement of the Act,"" the legislature may well be

taken to have laid down, by necessary intendment or implication, a positive test for the application of the Act, namely, that to attract its application,

the appeal must be from a decree or order, passed on or after the date of commencement of the said (amending) Act and, further, that that test will

be sufficient for the purpose. In other words, the intention of the amending statute was to give a limited retrospective operation to the amendment

by applying it to cases of pending proceedings too, but only in respect of decrees or orders, passed on or after the date of its commencement. In

our opinion, this is the reasonable interpretation of this particular statute (West Bengal Act XVI of 1957-the Bengal, Agra and Assam Civil Courts

(West Bengal Amendment) Act, 1957) which is consistent with what logically follows from the theory of intention of the legislature in the light of

settled principles, bearing upon retrospective operation of statutes, dealing with substantive rights, in view of the language, used (employed) by the

legislature, and without doing violence to it or overlooking or ignoring its express terms and the necessary intendment or implication, following

therefrom.

16. We hold, therefore, that the amending Act (West Bengal Act XVI of 1957) applies to pending proceedings also, where the decree or order in

question was passed on or after its commencement on January 1, 1958. That view is, no doubt, founded upon the necessary intendment or

implication, deduced by us from sec. 4 of the Act, but, from what we have already stated, such deduction is eminently reasonable and amply

justified.

17. As we have said above, sec. 4 would have been otherwise quite unnecessary and somewhat unmeaning and that is quite sufficient for letting in

the deduction, as made above by us, by way of necessary implication or inference [vide per Day, J. in (1904) 2 K.B. 165 (n)- Gorton Local

Board of Health v. Prison Commissioners (2) at page 166 (n)]. We may point out further that, while an implication, merely desirable or plausible,

may not satisfy the test of necessary implication, the implication need not, for satisfying such test, shut out every other possible conclusion. The

implication indeed need not be one, ""from which there is no escape, though it must be one which, under all the circumstances, is compelled by a

reasonable view of the statute and the contrary of which would be improbable or absurd"", or, in other words ""it must be so strong in its probability

that the contrary thereof cannot be reasonably supposed"" (see Crawford on "The Construction of Statutes" p. 266-Sec. 168).

18. From the above point of view, the test of necessary implication is in our opinion, amply satisfied in the present case, that is, so far as the

amending statute before us is concerned.

19. We would, therefore, accept the above construction of the amending statute and hold, in the light thereof, that the present appeal would lie to

the District Judge and not in this court and dispose of the same accordingly.

20. Let Office now take further and necessary steps in the matter (including return of the memorandum of appeal to the learned filing Advocate for

presentation to the proper Court) in the light of this decision.

21. There will be no order for costs in this appeal.

Law, J.

I agree.