(1986) 04 CAL CK 0035

Calcutta High Court

Case No: C.O. 113 of 1986

Arundhuti Nan and Others		APPELLANT
	Vs	
P.M. Daryanani		RESPONDENT

Date of Decision: April 30, 1986

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 115, 115(1), 115(1)(c)

Citation: 90 CWN 1028

Hon'ble Judges: Sukumar Chakravarty, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Saktinath Mukherjee and Bibhas Kumar Majumdar, for the Appellant;

Final Decision: Dismissed

Judgement

A.M. Bhattacharjee, J.

It is high time that we seriously remind ourselves about the limited and restricted scope of our revisional jurisdiction u/s 115 of the Code of Civil Procedure, a rather liberal use of this jurisdiction had added a great deal to our present forensic woes, has innundated our courts with unmerited litigations resulting in staggering arrears and has held up disposal of numberless cases in the subordinate courts for too long. The Section, however, as pointed out by the Privy Council in T. A. Bala Krishna Udayer (AIR 1917 Privy Council 71 at 74), quoted with approval by the Supreme Court in Keshordeo Chamaria (AIR 1953 S.C. 28 at 27), "applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it" and "is not directed to conclusions of law or fact in which the question of jurisdiction is not involved". Clauses (a) and (b) of Section 115(1) of the CPC providing for the invocation of the revisional jurisdiction in a case where the subordinate court has exercised a jurisidiction when there is none or has failed to exercise a jurisdicition where there is one, do not present much difficulties in their application. But it is Clause (c) of Section 115(1), couched in rather wide and indefinite language and

providing that the High Court may also exerise revisional jurisdiction when the subordinate court "appears to have acted in the exercise of its jurisdiction illegally or with material irregularity", that has led the various High Courts to go on enlarging the jurisdiction beyond permissible limits on the assumption that all cases of gross errors of law or facts would come within the ambit of this Clause (c) and such a view has very often been adhered to inspite of its repeated repudiation by the Privy Council and the Supreme Court during all these years spreading over more than a century.

2. As early as in 1884, Sri Bares Peacock, while construing the analogous provisions of Sections 622 of the CPC 1877, pointed out in Amir Hassan Khan (I.L.R. 11 Calcutta 6 at 8) that if the Court had jurisdiction to decide a case, then "even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity". Now whether one refers to this Amir Hassan Khan (supra) of 1884 or to the later Privy Council decision in T.A. Bala Krishna Udeyar (supra) of 1917 or to the much later Privy Council decision in N.S. Venkatagiri Ayyangar of 1949 (AIR 1949 Privy Council 156), or whether one refers to the Supreme Court decision in Keshordeo Chamaria (supra) of 1952 or to the much later decision of the Supreme Court in Vora Abbasbhai of 1963 (AIR 19 64 Supreme Court 1341), in Pandurang Dhondi of 1966 (Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav,) or in D.L.F. Housing & Construction Company of 1969 (AIR 1971 Supreme Court 2324) or to yet later decision of the Supreme Court in M.L. Sethi of 1972 (Shri M.L. Sethi Vs. Shri R.P. Kapur,) or in Sher Singh of 1978 (Sher Singh (dead) through L.Rs. Vs. Joint Director of Consolidation and others,), one will find the law to be the same, and the position in law will appear to be firmly established that the mere fact that the decision is erroneous in fact or in law does not amount to illegal or irregular exercise of jurisdiction and that while exercising the revisional jurisdiction it is not competent for the High Court to correct errors of fact or law, however gross or manifest, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself.

3. Lord Denning has no doubt said ("Discipline of law" Butterworths 1979, pages 63-66) that "in one sense no tribunal ever has jurisdiction to decide a case wrongly on a point of law". The learned Lord has proceeded to observe that "when Parliament sets up a tribunal, it does so in the belief that it will decide the case in accordance with law and not contrary to it. So much so that it may be said that it is a condition of the grant of jurisdiction that it should decide according to law" This, if true, would obliterate all distinctions between the jurisdiction of an Appellate Court and of a Revisional Court as under the CPC prevailing in India.

4. The dicta of the majority of the House of Lords in Anisminic Ltd. (1969 - 2 A.C. 147) might be regarded to have adopted such a view, but as pointed out by Mathew, J. in M.L. Sethi (supra, at 2 385), the effect of the dicta would be "to reduce the difference between jurisdictional error and error of law within jurisdiction almost to a vanishing point" so much so that "any error of law can be reckoned as jurisdictional"

and this would come "periliously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong." But, as we have already pointed out, the decisions of our pre-independence and post-independence apex courts are consistently against this view. In N.S. Venkatagiri Ayyangar (supra), the Privy Council construed (at 153) the expression "illegally" to mean "in breach of some provisions of law" and the expression "with material irregularity" to mean "by committing some error of procedure in the course of trial which is material in that it may have affected the ultimate decision". If there is no such "illegality" or "material irregularity", then the High Court, observed the Privy Council, "has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon the question of fact or law". These observations have been repeatedly quoted with approval and relied on by the Supreme Court in a number of decisions, to wit, in Keshordeo Chamaria (supra, AIR 1953 SC 23 at 28).

5. It should be noted that though some observations of Mathew, J. in M.L. Sethi (supra, at 2385) might give rise to the impression that his Lordship has referred to the enlargement of the revisional jurisdiction by the majority of the House of Lords in Anisminic Ltd. (supra) with some what implied approval, yet in deciding the case, however, his Lordship nevertheless relied on and followed the abovenoted observations in N.S. Venkatagiri Ayyangar (supra) and only added that even if an error of law with the jurisdiction could warrant intervention in revision, the order in that case was not vitiated by any error of law. In Sher Singh (supra), the Supreme Court (at 1345) has again relied on the above-noted observations in N.S. Venkatagiri Ayyanger (supra) as to the construction of the expressions "illegally" and "material irregularity" in Section 115(1) (c) of the CPC and has ruled that "a distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are connected with, questions of jurisdiction of the said courts, and errors of law which have no such connection" and that "an erroneous decision on a question of fact or law reached by the subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by the High Court u/s 115".

6. Goinq, as we must, by these tests, we do not think that in the instant case there has been either any non-exercise or any illegal exercise or any illegal assumption of jurisdiction by the trial court of the first appellate court to warrant our intervention u/s 115 of the Code of Civil Procedure. In the suit, giving rise to this revision, the plaintiff-tenant complained inter alia that the defendant-landlord bolted and locked the back door of the tenanted flat and thereby prevented the plaintiff-tenant from having any ingress and egress to and from the back portion of the tenanted premises. The trial Judge, as it appears from his order dated 2 3.985, has considered the materials on record in considerable details and has also considered as to whether the plaintiff has made out a prima facie case, whether irreparable injury would be caused to the plaintiff if the injunction as prayed is not granted and whether the balance of convenience or inconvenience is in favour of the plaintiff and

after such consideration as aforesaid, has granted temporary injunction both mandatory and prohibitory, mandating unlocking and unbolting of the said back-door and prohibiting any further obstruction to or interference with the opening of the said door so that the plaintiff may have easy access to the back portion to which the door leads. The trial judge also granted some other orders of injunction, but those not having been assailed before us do not require any consideration. On appeal, the appellate court has confirmed those orders after due consideration of the relevant facts and the principles of law. The trial court having jurisdiction under the law to grant or not to grant such an injunction, the case at hand cannot amount to non-exercise or illegal assumption of jurisdiction within the meaning of Clauses (a) and (b) of Section 115(1) of the Code of Civil Procedure. The trial Court and the Court of Appeal also do not appear to have acted in breach of any provision of law or to have committed any such error of procedure, and far less any error so material as to affect the decision arrived at and therefore, the courts below can not be said to have acted illegally or with material irregularity in exercise of their jurisdiction.

7. The Bench decision of this Court in Nandan Pictures vs. Art Pictures (A.I.R. 1956 Calcutta 428), is not an authority, and indeed there can be no authority, for such a broad proposition that an interlocutory injunction can not be granted in a mandatory form. The bench decision delivered by Sir Ashutosh Mookerjee as early as in 1913 in Israil vs. Samset (AIR 1914 Calcutta 362 and 364) is a very clear and weighty authority for the view that such interlocutory mandatory injunction for the view that such interlocutory mandatory injunction may be issued whenever equity and justice would warrant its isuance. Even in Nandan Pictures (supra at 430), Chakravarty, C.J., has clearly stated that, not that such an interlocutory mandatory injunction cannot issue, but that it should issue in rare cases where a very strong case is made out therefor. We are afraid that after two successive courts have found on facts a strong case for an interlocutory mandatory injunction, it is not for us sitting in revision to re-assess the materials on record in order to ascertain whether such a strong case has in fact been made out. That is the function of an appellate court; but we would however, and that even if we were sitting in appeal, we would have held that a sufficiently strong case has been made out for an interlocutory mandatory injunction in this case where it has been found that the backdoor of the premises let out to the tenant has been bolted and locked by the landlord. It is true that, as pointed out in Israil (supra) and Nandan Pictures (supra), an interlocutory mandatory injunction is generally granted directing the defendant to undo what he might have done in respect of the property after he has come to know about the plaintiff''s action seeking to restrain him from doing those acts. But there is no absolute proposition that an interlocutory mandatory injunction can be directed only against actions done by the defendant in bringing change in the situation of the property in dispute with the knowledge of the plaintiff''s suit. If forcible and unlawful change is effected in the situation of a property by a defendant before the

plaintiff could have occasion to file a suit, and such a change very adversely and prejudicially affects the enjoyment of the property by the plaintiff, nothing should prevent a court in a fit case to issue interlocutory mandatory injunction directing the defendant to undo what he has done, even though without the knowledge of the plaintiff''s suit. To illustrate, if a landlord all of a sudden forcibly and unlawfully blocks the entry of his tenant to the tenanted premises before the tenant could file a suit for proper relief, and the court finds that as a result of such action the tenant is virtually deprived of the enjoyment Of his tenancy, the court can not be powerless to issue interlocutory mandatory injunction to remove the blockade simply because that was effected before and without the knowledge of the suit. Such a view would be putting premium to all highhandedness and would encourage people to take law into their own hands. We are, therefore, of opinion that the courts below neither acted illegally nor with material irregulaity in issuing the order of injunction and there is nothing on recod to warrant our intervention in revision.

8. Mr. Mukherjee has also urged that even assuming that the back-door, which was locked, is a part of the plaintiff''s tenancy, the vacant space behind the door is not a part thereof and, therefore, the courts below were wrong in granting the injunction in a manner allowing the plaintiff-tenant access to and over such vacant space. It, however, appears from the record that the extent of the tenancy is also very much disputed. Whether the vacant space behind the back-door is also a part of the plaintiff''s tenancy or whether the plaintiff has or had some sort of licence only in respect thereof, is not a question which can be decided at this stage and surely not by us sitting in revision. And, therefore, the single Judge decision of this Court relied on by Mr. Mukherjee in Muhammad Ziaul v. Standard Vacuum (55 Calcutta Weekly Notes 232) to the effect that in case of revocation of licence the remedy may not be by way of injunction, but in damages, is hardly relevant. In the decision of the Supreme Court in Orient Distributors Vs. Bank of India Ltd. and Others, , which has also been relied on by Mr. Mukherjee, what has been decided is that the question as to whether on the materials on record the right to the disputed passage in that case amounted to an easement or a licence was not purely a factual issue and could be gone into in second appeal u/s 100 of the Code of Civil Procedure, as it stood before the Amendment Act of 1976. We do not think that this decision also can in any way help us in determining the true scope of our revisional jurisdiction u/s 115 of the Code of Civil Procedure. One word more before we conclude. Section 115 of the Code of Civil Procedure, as it stood before the Amendment Act of 1976, has now been numbered as sub-section (1) and a new proviso has been added thereto by the said Amendment Act providing inter alia that "the High Court shall not, under this Section, vary or reverse any order made in the course of a suit or proceeding, except where the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made". This can not and does not mean that an interlocutory order is always revisable if it has occasioned a failure of justice or has caused irreparable injury, even though the requirements of clauses

(a), (b) or (c) of sub-section (1) are not satisfied. In fact, in view of the proviso, a revision against an interlocutory order must now satisfy the further conditions contained in the proviso in addition to the jurisdictional conditions laid down in clauses (a), (b) or (c) of sub-section (1). It cannot be contended, except at the cost of all logic and reasoning, that while a final order can only be revised only when the restrictive jurisdictional conditions laid down in Section 115(1) are satisfied, an interlocutory order would nevertheless be revisable, even without satisfying those conditions, on the ground that the same has occasioned a failure of justice or has caused irreparable injury. In the case at hand, we have already held that the impugned order does not satisfy any of the conditions laid down in Clauses (a), (b) or (c) of Section 115(1) of the Code and as such no revision can lie even if the order has occassioned failure of justice or caused ireparable injury. But we would only like to add that, as explained hereinbefore, in the facts and circumstances of the case, the impugned order cannot be said to have caused any failure of justice or any irreparable loss to the petitioners.

In our opinion, therefore, there is nothing in this case to warrant our intervention in revision and we, accordingly dismiss the revision.

Sukumar Chakravarty, J.

I agree.