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Calcutta High Court

Case No: C.O. No. 734 of 1989

Surath Das and Others — APPELLANT

Vs

Ambar Naskar — RESPONDENT

Date of Decision: Sept. 11, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Evidence Act, 1872 - Section 138
- West Bengal Premises Tenancy Act, 1956 - Section 17(2)

Citation: 96 CWN 202

Hon'ble Judges: J.N. Hore, J

Bench: Single Bench

Advocate: K. Mitra and Tanmoy Goswami, for the Appellant;J. Bhattacharyya, for the Respondent

Judgement

J.N. Hore, J.

The short question that arises in this revisional application u/s 115 of the CPC for determination is whether an order refusing to put some question to a witness after recall in re-examination is revisable. The opposite party instituted T.S. No. 22 of 1987 in the 3rd Court of Munsif at Baruipur against the petitioners for ejectment from the disputed shop-room on the grounds of default in payment of rent and reasonable requirement for personal use and occupation. The petitioners filed an application u/s 17(2) of the West Bengal Premises Tenancy Act in which not only the relationship of landlord and tenant was denied but also the petitioners claimed title to the shop-room by virtue of purchase of the shop-room by their father Netaichand from the owner and landlord Gazi Golam Mustafa by a Kobala dated 18-6-73. The opposite party also claimed title to the disputed shop-room on the strength of a Kobala executed on 8.6.73 Gazi Golam Mustafa. During the hearing of the proceeding u/s 17(2) of the West Bengal Premises Tenancy Act, petitioner no. 2 Sudhin Kumar Das was examined as PW 2 who stated in the examination in chief

that he and his brother helped their father in carrying on negotiations for the purchase and that they looked after the shop-room. During cross-examination a question was put to PW 2 as to whether he lives in a different house at present which the witness answered in the affirmative. The petitioners filed a petition to put a question to him as to the date since when he has been living away from his ancesytnal house, after re-calling the witness for re-examination. By Order No. 32 dated 21.2.89, the learned Munsif rejected the prayer on the ground that the purported question aimed at frustrating the effect of cross-examination on the point. This order is under challenge in this revision. Mr. Maitra, learned Advocate for the appellant as contended that the scope of Section 115 of the CPC has been enlarged by the amending Act of 1976. Section 115(1) says that the High Court can exercise its powers of revision regarding ''any case which has been decided'' and the Explanation added by the amendment made in 1976 has defined the expression ''any case which has been decided''. That Explanation expressly says that it ''includes any order made, or any order deciding an issue, in the course of a suit or other proceeding''. Any order affecting the right of a party is revisable in view of the enlarged meaning of the expression ''any case which has been decided''. It has been further contended that re-examination of a witness u/s 138 of the Evidence Act in order to remove ambiguity and explain a statement of the witness is a matter of right and ince the impugned order has affected the right of the petitioners it is revisable. In supported of his contention he has referred to a number of decisions Major S.S. Khanna Vs. Brig. F.J. Dillon, ; Baldevdas Shivlal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, ; Ramgulam Choudhary and Others Vs. Nawin Choudhary and Others, ; Badrinath Gupta Vs. Estates Officer (Controller of Aerodromes), ; Manindra Kumar Rai vs. Paresh Chandra Dey, AIR 1971 A&N 127.

2. Mr. Bhattacharjee, learned Advocate for the opposite party has, on the other hand, contended that the scope of the revisional jurisdiction has not been widend by amendment of Section 115 in 1976. It has been rather restricted by virtue of Clauses (a) and (b) of the proviso and that interlocutory order like the present one which does not determine any right of the parties in any matter in controversy is not revisable. In support of his contention he has referred to the decision of this court in Smt. Kalibala Akbuli & Others vs. Sambhu Akhuli and Ors., 1981(1) CLJ 290.

3. By the Amendment Act of 1976 the following proviso has been added : "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of suit or other proceeding, except where : -

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section vary or reserve any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation: In this section, the expression "any case which has been decided" includes any order made, or any deciding an issue, in the course of a suit or other proceeding.

4. The power of the High Court u/s 115 is exercisable in respect of "any case which has been decided". The expression case decided heretofore was not defined giving rise to a large number of decisions regarding the true import of the expression. By Amendment Act of 1976, the expression has been defined. Even before this amendment, the Supreme Court in Major S.S. Khanna Vs. Brig. F.J. Dillon, , has held that the expression ''case'' is a word of comprehensive import and it includes civil proceedings other than suits and is not restricted to the entirety of the proceeding in a civil court. Where during the proceeding some order is passed which adjudicates for the purposes of the suit, some rights or obligation of the parties in controversy, it could be considered as "case decided" so as to attract Section 115 . Thus decision on a preliminary issue relating to maintainability of the suit is a case decided. Khanna''s case (supra) was explained in Baldevdas Shivlal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, where trial Judges'' order over-ruling an objection to a certain question put to a witness was challenged in revision. The Supreme Court held that an interlocutory order which did not adjudicate upon or determine any question relating'' to the rights of the parties does not amount to a case decided. This case was followed to the The State of Punjab Vs. Sri R.P. Kapoor and Others, .
5. In the case of Badrinath Gupta, AIR 1977 J. and K. 38 (supra), it has similarly been held that the term ''case decided'' is not confined to the decision of the case as a whole but would also include part of case which decides a substantial question in controversy between the parties. The touchstone, therefore, would be to find out if the order under revision has determined some right or claim between the parties which is legally enforceable. It has, it would be a ''case decided'' and jurisdiction u/s 115 , CPC may be invoked but if it does not decide any such substantial right or wuestion it will only remain an interim order and would not amount to a ''case decided'' e.g. no revision would lie against orders adjourning the case; fixing some date or asking for better particulars etc. Major S.S. Khanna Vs. Brig. F.J. Dillon, , Foll; AIR 1954 Hyd. 66 (FB), Ref.

6. Order not disposing of an application u/s 113, CPC but only deferring the consideration of the question involved in the application till the hearing of the appeal was held no to amount to a case decided within Section 115 CPC Order was held not revisable. In the case of Ramgulam Choudhary and Others Vs. Nawin Choudhary and Others, , the same view was taken following Khanna''s case and Baldevdas Shiblal''s case (supra).

It has been held that "case must be considered in a wider sense as will include also decisions, at various stages of the suit provided they are adjudications of right or obligations of parties for the purposes of deciding the suit or proceeding. In Manindra Kumar Rai''s case AIR 1971, A&N 127 (supra) it has been held that interlocutory orders are of such a nature that if they are not interfered within a proper time, their continuance will lead inordinate delay in disposal of issues raised in the suit and in many cases will also result in hardship to the parties to the suit and hence a revision against such order is not incompetent. In Yaqoob Ali Vs. Firm Haji Taj Khanji Ibrahimji, Udaipur, , it has been held that an interlocutory order relating to jurisdictional error, if it falls within the expression "any case which has been decided", can be challenged in revision provided the aggrieved party satisfies the High Court that the order has resulted in failure of justice or has caused irreparable injury to him. The mere fact that such an order can be challenged in an appeal u/s 105 is no ground for refusal to interfere in revision.

7. It would be clear from the above that an interlocutory order which decides a right or obligation of the parties in controversy may be challenged in revision u/s 115. The Explanation as inserted by the amending Act does not mean that any interlocutory order is revisable. It is only that kind of interlocutory order which adjudicates any right or obligation of the parties to the proceeding Is revisable. By inclusion of the Explanation at the end of the proviso, the revisional powers of the High Court have not been enlarged or extended. As held in the case of Smt. Kalibala Akhuli and Ors. 1981(1) CLJ 290 (supra), the amendment of Section 115 of the Code was made in 1976 to indicate the restrains which have been put upon the High Court when it will exercise its powers of revision. That appears from clauses (a) and (b) of the proviso, which provide that the order complained of must be one, if it had been made in favour of the party applying for revision, which would have finally disposed of the suit or other proceeding, or If the order be allowed to stand, would occasion a failure of justice or cause Irreparable injury, respectively. Unless either of these tests be satisfied, the High Court cannot envisaged by the provisions of Section 115. It also appears that inspite of the inclusion of the Explanation at the end of the proviso, the revisional powers of the High Court have not been enlarged or extended. The manner in which such revisional powers are exercisable has only been chalked out by insertion of the aforesaid two clauses (a) and (b). as otherwise there will be a spate of cases and there will be no end of litigation.

8. It was held that by disallowing the questions put to the witness on behalf of the petitioners, the learned Munsif did not adjudicate, for the purpose of the pre-emption case, any right or obligation of the parties to the proceeding. The pre-emption case is still pending before the learned Munsif and accordingly the petitioners may be ventilate their grievance in this respect in the Appellate Court, should their application for pre-empton be eventually rejected by the learned Munsif. That being the position, the order complained of is not revisable and the present application is not maintainable u/s 115 of the Code. The fact of the present

case are similar and the decision is clearly applicable in the present case. In Manohar Lal Vs. Valerior (Cawnpore) Pvt. Ltd. and Another, , it has similarly been held that the proviso to Section 115(1) limits the power of the High Court and provides that it shall not vary or reverse any order except where the conditions laid down in clauses (a) and (b) are satisfied. The proviso does not touch the opening part of Section 115 which states that "The High Court may call for record of any case which has been decided by any Court subordinate to such High Court. It only restricts the exercise of powers in regard to orders which amount to deciding a case. A restriction imposed in regard to exercise of power cannot be construed as enlarging the scope of expression "any case which has been decided " by any subordinate court. Under the proviso, even if an order amounted to deciding a case, its variance or reversal has to depend upon the fulfillment of conditions laid down in clauses (a) and (b). In any event the order has to amount to a "case decided" before it can be called in question under Sect 115. The Explanation added to the section does not indicate anything to the contrary. It only suggests that the order in question need not dispose of the entire suit in order to amount to a "case decided". It is fairly settled that in order to constitute a "case decided" the order must adjudicate upon some right or obligation of the parties in controversy.

9. In the case of Ramgulam Choudhary and Others Vs. Nawin Choudhary and Others, on which Mr. Maitra relies, trial court allowing the plaintiff to adduce further evidence after the defendant closed his case was held not a ''case decided'' so as to suffer interference in revision. In the instant case, the impugned order does not adjudicate any right or obligations of the parties. The proceeding u/s 17(2) of the West Bengal Premises Tenancy Act is still pending and the question whether there is relationship of landlord and tenant between the parties and whether the petitioner defendants are liable to deposit the alleged arrear rents which have bearing upon the fate of the suit have not been decided as yet. Even the evidence is not complete. The impugned order is not, therefore, revisable and the present application is not maintainable u/s 115 of the Code. The Rule is discharged. The interim orders are vacated. There will be no order as to costs.