
Smt. Jayanti Mukhopadhyay Vs Mahendranath Panja

C.O. No. 944 of 2000

Court: CALCUTTA HIGH COURT

Date of Decision: Aug. 3, 2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Section 115#West Bengal Land Reforms Act, 1955 -
Section 9(6)

Citation: (2016) 3 CalLJ 149 : (2016) 4 ICC 146 : (2017) 1 WBLR 40

Hon'ble Judges: Mr. Shivakant Prasad, J.

Bench: Single Bench

Advocate: Mr. Debjit Mukherjee, Mrs. Susmita Chatterjee and Ms. Dipanwita Ganguly,
Advocates, for the Opposite Parties; Mr. Haradhan Banerjee, Mr. Amitava Pan and Mr.
Subharangshu Datta, Advocates, for the Petitioner

Final Decision: Dismissed

Judgement

Shivakant Prasad, J. - Order No. 29 dated 28th March, 2000 passed in L.R. Misc. case no. 13 of 1998 by the learned Civil Judge (Junior

Division), 7th Court, Howrah is under challenge whereby the learned trial Judge decided an application under Order 14, Rule 2 on contest and

considering the disputed property being homestead situated within the area of Howrah Municipal Corporation held that the Misc. case under 8 of

WBLR Act has no application as not maintainable.

2. Chronological event leading to the instant case is that the petitioner being absolute owner and occupier of the property comprised in Municipal

Holding no. 76/5, Ichapur Road, P.O. Kadamtola, P.S. Bantra, District-Howrah had filed an application on 09.4.1998 under Section 8 of the

West Bengal Land Reforms Act for pre-emption on the ground of being adjoining owner of the premises, against the opposite party no. 1.

3. After entering appearance, the opposite party no. 1 herein filed objection against the said application under section 8 of the West Bengal Land

Reforms Act, contending inter alia that the application is not maintainable in its present form, either in law or on facts and filed an application under

Order 14, Rule 2 of the C.P. Code on the ground of maintainability in law and that the provisions of the West Bengal Land Reforms Act, 1955 has

got no application in the case when the suit property is situated within the area where the Urban Land (Ceiling & Regulation) Act, 1976 is attracted

and the said application was contested by the petitioner on the contention that the purported application precisely conveyed the mixed question of

law and fact and as such, the application under Order 14, Rule 2 of C.P. Code should be summarily rejected as not applicable in Misc. Case and

also that the Urban Land (Ceiling & Regulation) Act, 1976 has already been repealed by the Parliament and as such, Urban Land (Ceiling &

Regulation) Act, 1976 is no longer in existence. Therefore, the question that West Bengal Land Reforms Act, 1955 is not applicable where the

Urban Land (Ceiling & Regulation) Act, 1976 only applies does not arise in the facts and circumstances of the case. Upon hearing the learned trial

Court disposed of the application under Order 14, Rule 2 C.P. Code on finding that the Misc. case under section 8 of WBLR Act was not

maintainable.

4. Being aggrieved by and dissatisfied with order no. 29 dated 28.3.2000 passed by the learned 7th Civil Judge (Junior Division), Howrah in L.R.

Misc. Case No. 13/98, the petitioner preferred this revision, inter alia, on the grounds that the learned Court below acted illegally with material

irregularity in taking up the point of maintainability which is a mixed question of law and fact in exercise of power conferred under Order 14, Rule 2

of the Civil Procedure Code.

5. It is contended that the West Bengal Land Reforms Act is applicable in Howrah as the petitioner is a raiyat under the West Bengal Land

Reforms Act and the definition of "land" covers the land held by this petitioner/raiyat and as such, there is no embargo as to the maintainability of

the application filed by the petitioner. The judgment of this Hon"ble Court delivered in the case of Samir Kumar Sen v. Madan Mohon Sett was

challenged before the Hon"ble Supreme Court and the Hon"ble Supreme Court upheld the findings of this Hon"ble Court that -

Land Reforms Act applies in respect of a land situated within the Municipality of Howrah where the Urban Land (Ceiling & Regulation) Act is

also applicable.

6. Accordingly, it is submitted by the learned Counsel for the petitioner that in such view of the matter, the application under section 8 of the West

Bengal Land Reforms Act is squarely maintainable in the eye of law and the Court misinterpreted the provisions of West Bengal Land Reforms Act

and the Land Ceiling Act when Land Ceiling Act is no longer in force in the country and learned Court below ought to have held that the

application under section 8 of the West Bengal Land Reforms Act is quite maintainable even in respect of a land situated within the Howrah

Municipal Corporation. Accordingly the petitioner prayed for setting aside the impugned order as bad in law and in fact.

7. This Court is called upon to decide on the issue as to whether revisional application under Section 115 of CPC would be maintainable in view of

a statutory provision for appeal under section 9(6) of the West Bengal Land Reforms Act.

8. Section 9 Sub-Section 6 of WBLR Act enjoined as under -

Any person aggrieved by an order of the Munsif under this section may appeal to the District Judge having jurisdiction over the area in which the

land is situated, within thirty days, from the date of such order and the District Judge shall send a copy of his order to the Munsif. The fees to be

paid by the parties and the procedure to be followed by the District Judge shall be such as may be prescribed.

9. It is submitted by Mr. Debjit Mukherjee learned counsel for the opposite parties that in the event the revisionist is allowed to prefer appeal

before the District Judge, the findings from the District Judge in appeal may earn benefit to the opposite parties.

10. Secondly, that the rulings referred to by the revisionist are all related under Article 227 of Constitution and they are not applicable in case of

revision under Section 115 of C.P. Code.

11. Thirdly, that the decisions reported in (i) Sanjeev Kumar & Brothers (M/s.) v. Calcutta Tramways Company (1978) Ltd., 2015(4) ICC

523, (ii) 2011(1) WBLR, Cal. 361, (iii) Tata Steel Processing & Distribution v. Unit Construction Company Pvt. Ltd., 2012(2) CHN, Cal. 245,

(iv) 2011(14) SCC 337, (v) Oriental Insurance Company v. Vikrant Refrigeration P. Ltd., 2012(3) CLJ 410, (vi) Rathindra Nath Adhikari v. State Of West Bengal, AIR 1991 Cal. 409, (vii) 2015(16) SCC 773, (viii) Sadashiv Prasad Singh v. Harendar Singh, 2015(5) SCC 574 held that Revision is not maintainable when alternative relief of appeal is available.

12. To counter the above arguments, Mr. Haradhan Banerjee learned counsel for the petitioner has submitted as under -

(a) That at the time when impugned order was passed on 28.03.2000, order was not appealable under 9(6) of WBLR Act because under Section

6 of West Bengal Land Reforms & Tenancy Tribunal Act, 1997 the Land Tribunal had jurisdiction under Section 6 of the Tribunal Act, 1997.

(b) It is submitted that in case reported in 2001(2) CLJ 319, High Court took the view that the revision before the High Court was not

maintainable but in case reported in Samsul Huda v. Mosharaf Hussain, 2002(2) CHN 227 High Court took the view that the provisions of

the Act of 1997 do not oust the jurisdiction of High Court to entertain revision under Section 115 of CPC. Thus for two conflicting views matter

was referred to Special Bench being reported in Pashupati Adhikary v. Pradyut Kumar @ Tarapada, 2003(4) CHN 347 wherein it has been

held that the revision is maintainable before the High Court and not before Land Reforms Tribunal. Thus, law was unsettled position at the time

when impugned order was passed.

13. It is submitted that on 09.5.2000 the revisional application was admitted and direction to parties to file affidavit was given on 08.08.2001 and

on 27.03.2002 the revisional application was remitted to the tenancy Tribunal in view of promulgation of West Bengal Land Reforms and Tenancy

Tribunal Act, 1997 on submission of learned Advocates for both the parties.

14. It would appear that vide Order dated 31.01.2005 the Tribunal sent the record back to the Hon"ble High Court since the matter related to

pre-emption.

15. It further appears from Order dated 15.05.2007 that Mr. Mukherjee challenged the maintainability of the instant proceeding on the ground that

no revisional application is maintainable against the order of dismissal of application under section 8 of the WBLR Act and as such, pendency of

the matter for about 16 years before this Court is not due to the fault of the opposite parties.

16. Mr. Banerjee referred to a decision in case of Bimal Sahoo, Secretary Basudebpur Girls" High School and others v. Gouri Rani

Pahari and others reported in AIR 1991 Calcutta 120, wherein it was held that Civil Court can interfere if the statutory authority acts in

violation of rules or acts in abuse of its authority or in violation of fundamental principles of judicial procedure. Where fresh interview was held for

the post of Assistant teacher in violation of the order of the Court and in contravention of the statutory rules of recruitment civil Court can interfere

and in that view of the matter the application under Article 227 challenging the maintainability of civil suit was dismissed. The said decision in my

considered opinion is distinguishable from the facts and circumstances of the case as the order under challenge was not readily on the count that the

interim order can be challenged in a Misc. appeal before District Judge in case ad-interim order of injunction in a suit under Order 43, Rule 1 (r) or

CPC and instead of appeal revisional application under Article 227 of Constitution was filed.

17. Decision in case of L. Hirday Narain v. Income-Tax Officer, reported in AIR 1971 SC 33 held that the order under question was

revisable under Income Tax Act before Commissioner of Income Tax but the High Court entertained the petition and heard on the merits finding

revision as maintainable. This decision in my considered opinion is not pat on the point.

18. In case of Surya Dev Rai v. Ram Chander Rai & Ors reported in (2003) 6 SCC 675 it has been observed in Paragraph 3 and 4 thus -

3. This appeal raises a question of frequent occurrence before the High Courts as to what is the impact of the amendment in Section 115 of the

C.P.C. brought in by Act 46 of 1999 w.e.f. 01.07.2002, on the power and jurisdiction of the High Court to entertain petitions seeking a writ of

certiorari under Article 226 of the Constitution or invoking the power of superintendence under Article 227 of the Constitution as against similar

orders, acts or proceedings of the courts subordinate to the High Courts, against which earlier the remedy of filing civil revision under Section 115

of the C.P.C. was available to the person aggrieved. Is an aggrieved person completely deprived of the remedy of judicial review, if he has lost at

the hands of the original court and the appellate court though a case of gross failure of justice having been occasioned, can be made out?

4. Section 115 of the Code of Civil Procedure as amended does not now permit a revision petition being filed against an order disposing of an

appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is

that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of

revisional jurisdiction in such a case is taken away by the proviso inserted under sub-section (1) of Section 115 of the CPC. The amendment is

based on the Malimath Committee's recommendations. The Committee was of the opinion that the expression employed in Section 115 CPC,

which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury

to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this

was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of

revision but strongly felt that the power should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso, being deleted and a new

proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is

substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

19. In the context of the above discussion, the Hon"ble Apex Court was of the view that the power under Article 227 is wider than the one

conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or

traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar. In my

considered view having regard to the observations in paragraph 3 and 4 of the cited decision that the revisional power before the Hon"ble Court

under the Article 227 of Constitution can be exercised if the error occurs in the order of the appeal court below. Here in this case, the petitioner

straightway preferred revision under section 115 C.P. Code instead of preferring an appeal before the District Judge under Section 9 (6) of

WBLR Act as the order impugned is appealable before the District Judge under the statute. I am of the opinion that revision under the scheme of

Article 227 can be maintained, had the District Judge being the appeal court committed an error in his order while exercising his appellate power

under Section 9(6) of the said Act, but this is not the situation before this Court. In 2007 the opposite parties had invited the attention of the

petitioner on this score as regards maintainability of revision under section 115 of the Code. The Hon"ble Court had earlier remitted the case to

tenancy tribunal under Act 1997 so obviously it meant that the Hon"ble Court was of the considered view that the tenancy tribunal had the

exclusive jurisdiction to deal with case before it in such matter but later on it was decided that the case was not maintainable before the tribunal but

the case was undoubtedly maintainable in an appeal under Section 9 (6) of WBLR Act against order of non-maintainability of pre-emption under

section 8 of the said Act. Instead the petitioner wanted to test the order of the trial Court under instant revision. If the Hon"ble High Courts power

is wide enough under the scheme of Article 227 of Constitution, then there was no occasion to have remitted the case to Tenancy Tribunal.

20. Mr. Banerjee also relied on decision in the case of State Of H. P. v. Gujarat Ambuja Cement Ltd., 2005 (6) SCC 499 Para 23

contending that writ petition is maintainable notwithstanding alternative remedy when order is without jurisdiction; when palpable injustice to writ

petitioner before him to adopt remedies provided by statutes. This decision is obviously distinguishable from the instant fact as the application

challenges an order of trial Court under section 115 of C.P. Code, which order is appealable before the District Judge under the statute.

21. Per contra, Mr. Mukherjee relied in case of Union of India & Ors v. Major General Shri Kant Sharma & ... reported in 2015(6)

Supreme Court Cases 773 wherein exercise of jurisdiction by the High Court entertaining writ petition against final order or decision passed by

Armed Forces Tribunal under Section 30 of 2007 Act, bypassing statutory redressal mechanism was held improper and held that High Court

should refrain from entertaining petition under Article 226 of the Constitution if effective alternative remedy is available to aggrieved persons or

statute under which action complained of itself contains redressal mechanism.

22. In case of Sadashiv Prasad Singh v. Harendar Singh & Ors reported in (2015) 5 Supreme Court Cases 574 held that proper forum to

challenge the order of Recovery Officer under RDDB Act, 1993 is an appeal under section 30 of the Act and not in the writ petition and observed

that High Court erred in entertaining such writ petition as the alternative efficacies remedy was available to the petitioner.

23. In the case of Nivedita Sharma v. Cellular Operators Association of India And Others reported in (2011) 14 Supreme Court Cases

337, it has been observed in Paragraphs 25, 26 and 27 as follows -

25. What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various

judgments of this Court and yet it has declared that the directions given by the State Commission are without jurisdiction and that too by

overlooking the availability of statutory remedy of appeal to the respondents.

26. We also find that the high has taken cognizance of the statement made on behalf of the counsel for the petitioners that their clients would

challenge Clause (iii) of para 38 of the State Commission"s order by filing an appeal under Section 19 of the Act and the fact that one of the

aggrieved parties, namely, American Express Bank Ltd. has already filed an appeal questioning para 38(iii) of the order of the State Commission.

After having noticed that some of the petitioners were inclined to avail the remedy of appeal against the particular portion of the order passed by

the State Commission, the High Court should not have entertained the writ petition filed under Article 226 of the Constitution and the miscellaneous

petitioners filed under Article 227 of the Constitution and directed them to avail remedy of appeal under Section 19 of the 1986 Act. The appeal is

accordingly allowed and the impugned order is set aside.

27. However, liberty is given to Respondent 1 and others to challenge the order of the State Commission by availing the alternative remedy of

appeal under Section 19 of the 1986 Act. We also direct that if the respondents or any one of them file(s) an appeal within a period of 60 days

from today, then the same shall be entertained by the National Commission and decided on merits. We also give liberty to American Express Bank

Ltd. to amend the memo of appeal for the purpose of challenging the order of the State Commission on other grounds. It will also be open to

Respondent 1 and others to apply for stay of the order of the State Commission. If any such application is filed, the National Commission shall

decide the same on its own merits without being influenced by the observations contained in the impugned order.

24. Thus, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the

fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without

jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However,

the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved

person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still hold the field.

25. In case of *The Oriental Insurance Company Ltd. v. M/s. Vikrant Refrigeration (Pvt.) Ltd. & Ors.* reported in 2012(3) CLJ (Cal.), 410, wherein it has been held thus -

Generally, a petition under Article 227 of the Constitution is entertained despite the avenue of appeal being open to the petitioner when the

jurisdiction has been erroneously assumed or refused to be assumed or there is a question of inherent lack of jurisdiction. The assumption of

jurisdiction by disregarding a clause in the contract that limits the time to carry an action in respect thereof, is not a palpably erroneous assumption

of jurisdiction that would enthrone the High Court to receive the complaint despite the remedy of appeal being available.

26. In the said decision the reference to a judgment reported in 2003(6) SCC 675 has been made which was rendered on the scope of Articles

226 and 227 of the Constitution in the light of the 2002 amendment to the Civil Procedure Code that restricted the operation of Section 115 of the

Code. The petitioner says that it has been recognised by the Supreme Court that when there is an erroneous assumption of jurisdiction by a judicial

or quasi-judicial forum over which the High Court exercises superintendence and a complaint in such regard is carried under Article 227 of the

Constitution, the High Court will not refuse to entertain the same merely because the order impugned is appealable. Nevertheless, Hon"ble Apex

Court further held that in view of the appellate route being available to the petitioner under Consumer Protection Act, 1986, the petition under

Article 227 of Constitution cannot be entertained.

27. Mr. Mukherjee yet referred to a case of Tata Steel Processing & Distribution v. Unit Construction Company Pvt. Ltd reported in 2012(2) CHN(CAL) 245 wherein relying on various decisions of the Hon"ble Apex Court, Single Bench of this Hon"ble Court held that there is

no quarrel to the provision of law that the High Court can interfere under Article 227 in case of an erroneous assumption or acting beyond the

jurisdiction etc. but High Court should make a self-imposed restriction in exercise of power under Article 227 if the erroneous illegal order is

capable of being corrected by the appellate jurisdiction under the statute.

28. In case of Rathindra Nath Adhikari v. State of West Bengal And Others reported in AIR 1991 Calcutta 409 the factual aspects of

the case in the cited decision is apposite to the instant case.

29. It has been observed in Paragraphs 7 and 8 as follows -

7. Article 227 of the Constitution of India as it stood prior to the amendment conforms to the provisions of the Charter Act and of the

Government of India Act of 1915 and 1935. The basic distinction and differences involves the constitutional jurisdiction. Normally, the Court

should adopt the fundamental approach towards the dispute of the present nature. Generally, when there is another remedy open to a party which

is effective and adequate to meet the ends of justice in a case, the High Court will not use its extraordinary powers covered under Article 226 of

the Constitution of India. The power of revision is entirely a distinctive feature of the statute so also the power of superintendence which is now a

matter of constitutional points. The condition of limitation restricts the revisional power of the High Court for which the power was exercised.

8. Thus under section 115 of the Code of Civil Procedure, the High Court has revisional jurisdiction over the orders of the lower Court and further

it is also necessary that such Court is subordinate to High Court. As regards the condition under which the revisional jurisdiction can be exercised,

there must be a case decided by the subordinate Court. Further, it is a case in which no appeal lies to the High Court.

30. In unequivocal term I am of the view in respectful consideration of the above cited decisions referred to by the rival parties on the question of

invocation of the revisional jurisdiction being an extraordinary jurisdiction under the scheme of Article 227 of Constitution, that the remedy of

appeal under Sub-section 6 of Section 9 of West Bengal Land Reforms Act, 1955 before the District Judge is an efficacious and statutory remedy

of appeal for adequate relief to the petitioner. Therefore, the petitioner cannot be permitted to resort to an extraordinary jurisdiction of this Court

by converting his application under Section 115 of Code of Civil Procedure to one under Article 227 of Constitution of India, ergo, the petitioner

be relegated to the forum of appeal as provided under the statute and the District Judge shall be at liberty to deal with all the grounds of appeal in

the light of decisions in case of Rajat Neogi v. Pradip Kr. Sen & Anr. [2010(1) CLJ (Cal) 81.; Sabri Properties Pvt. Limited v. CTS

Industries Limited [(2016) 1 WBLR (Cal) 133 as expeditiously as possible after the appeal so preferred before him.

31. In the context of the above, the application is disposed of, however, without any order as to costs.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.