(1958) 06 BOM CK 0019

Bombay High Court

Case No: Civil Application No. 1160 of 1956, Special Civil Application No. 2110 of 1956

Appa Ramgonda Patil		APPELLANT
	Vs	
Dattatraya Vinayak Tengshe		RESPONDENT

Date of Decision: June 17, 1958

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 109, 114, 141, 2
- Constitution of India, 1950 - Article 137, 226, 227

Citation: (1958) 60 BOMLR 1312

Hon'ble Judges: M.C. Chagla, C.J

Bench: Single Bench

Judgement

M.C. Chagla, C.J.

This is an application for review, against an order passed by Mr. Justice Dixit and myself on December 20, 1955, on a writ application under Articles 226 and 227 of the Constitution directed against the decision of the Revenue Tribunal, and the first point urged by Mr. Phadke on behalf of the respondent is that a review application does not lie. What is urged is that a Court has no inherent power of review and the only power of review conferred upon the civil Court is by Section 114 of the Civil Procedure Code, and inasmuch as a review is sought in a writ proceeding under the Constitution, Section 114 has no application, and if Section 114 has no application there is no power in the High Court to review its own decision on a writ proceeding and the High Court cannot assume that power under any inherent jurisdiction. It is pointed out that Article 137 of the Constitution expressly confers power of review upon the Supreme Court. In the absence of any such provision in the Constitution with regard to the High Court, a review application in a writ proceeding is not maintainable. Now, the answer to this argument of Mr. Phadke is simple. A writ application under the Constitution is a civil application and that application comes before a civil Court, which in this case happens to be the High Court, and the civil application must be governed, as far as procedure is concerned, by the provisions of

the Code. Section 141 expressly provides:

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Now, all proceedings in a civil Court terminate in a decision being given by the Judge and that decision constitutes the order of the Court. It is an order within the meaning of Section 2(14) which defines "order" as the formal expression of any decision of a civil Court which is not a decree. This is not a decree because it is not the formal expression of an adjudication in a suit. If it be the formal expression of the adjudication by the Court in a civil proceeding, the formal expression must take the shape of an order, and, therefore, it is clear beyond doubt that the decision of this Court on the writ application was an order within the meaning of the Civil Procedure Code. If that is so, let us turn to Section 114 to see what the effect of this view is with regard to the power of the High Court to review an order made on a writ application.

2. A review lies u/s 114 from a decree or order from which an appeal is allowed by the Court, but from which no appeal has been preferred. When we turn to Section 109, an appeal is allowed against an order if the High Court certifies the order to be a fit one for appeal, and although an appeal is allowed no appeal admittedly has been preferred from this order and therefore if the other conditions laid down by Order XLVII are satisfied, then it is difficult to understand why the High Court has no power to review an order passed on a writ application. Such an order is one which clearly falls u/s 114(a).

3. The difficulty is really caused by certain observations of this Court in In re Prahlad Krishna (1950) 53 Bom. L.R. 61. There we were considering the power of review of this Court in a criminal matter and in connection with that we observed (p. 64):

...It is clear that no Court has an inherent power of review. A power of review like a power of appeal must be conferred by statute. As far as the Criminal Procedure Code is concerned, no power of review is given to the High Court in criminal matters, and there is nothing in Article 226 which would induce us to hold that the Constitution has conferred a power upon the High Court of review in matters falling under that article.

These observations, clearly relate to the particular application that was made in that case which was an application u/s 491 and which application was rejected by the High Court and an attempt was made to get the decision of the High Court reviewed, and in the Full Bench the High Court came to the conclusion that the High Court had no such power. It will be noticed that unlike the Civil Procedure Code, the Criminal Procedure Code confers no power of review upon the High Court, and the view has been consistently taken that once the High Court has delivered a judgment on its Criminal Side, it is functus officio and it cannot review its own decision. But the position is strikingly different in the case of civil matters because the CPC expressly

confers the power of review u/s 114, and therefore these observations of the Full Bench must not be torn from their context and be given a wider application than they have. What is true of a criminal case, what is true of the provisions of the Criminal Procedure Code, is not necessarily true with regard to a civil matter and the provisions of the Civil Procedure Code. An identical view has been taken of the law in a decision of the Madras High Court in Chenchanna v. Praja Seva Transports Limited [1952] Mad. 1000. With respect, I agree with the view taken by that Court.

4. The rest of the judgment is not material to this report.