(1989) 01 BOM CK 0044

Bombay High Court (Nagpur Bench)

Case No: Civil Revision Application No. 684 of 1985

Amrutlal Weljibhai Rathod		APPELLANT
	Vs	
Vishwasrao Deorao Patil		RESPONDENT

Date of Decision: Jan. 21, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Evidence Act, 1872 - Section 114

Citation: AIR 1989 Bom 410 : (1989) 3 BomCR 467 : (1989) 91 BOMLR 246

Hon'ble Judges: M.S. Ratnaparkhi, J

Bench: Single Bench

Advocate: S.C. Mehadia, for the Appellant; A.M. Bapat, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. A Decree passed by the District Judge, Yavatmal on 29-3-1985 in civil Appeal No. 189/82, setting aside the decree of eviction passed by the 5th Joint Civil Judge, Junior Division, Yavatmal on 26-8-1982 in Regular Civil Suit No. 207/81. Has been assailed in this revision. It was not disputed that the plaintiff Amrutlal was the landlord and the defendant Vishwasrao was his tenant occupying the tenement. The plaintiff obtained the permission to determine the tenancy of the tenant from the Rent Controller. In pursuance of this permission , a notice was issued. The suit for eviction came to be filed which was decreed by the trial Court but that decree has been set aside by the Appellate Court in appeal. The dismissed was based only on ground viz. That the quit notice was never served on the defendant with a view to appreciate the real controversy centering round this point, it will be necessary to state that the plaintiff sent one notice on 9-9-1981 by Registered Post A.D. on the address of the defendant. According to the plaintiff, this notice was returned back to him with the endorsement "refused", on 12-9-1981. The plaintiff also sent another notice determining the tenancy on the same date. But instead of sending if by

Registered Post. It was sent under Certificate of Posting. The case of the defendant is that, he did not receive this notice.

2. It appears that during the trial, the postal receipt evidencing the registration was produced before the Court. the plaintiff on oath deposed before the Court that this notice was sent by Registered letter acknowledgment due. The Postman Mr. Dhurve (P.W. 2) was examined by the plaintiff and this witness stated on oath that on 12-9-1981 he did take this registered packed to the defendant who refused to accept it, and therefore, he wrote an endorsement "refused" and returned back that registered packed to the post. It is also interesting to note that in the testimony of Mr. Dhurve, he positively stated that on the very day, there was one Money Order addressed to the defendant. He took that money order to the defendant and the defendant accepted it. The witness was cross examined. After the examination of this witness, the defendant was examined and in his cross examination, a question was put to him, whether the Money Order was tendered to him by the postman Mr. Dhurve on 12-9-1981. To this question, instead of a plain denial, the defendant deposed that be does not remember. This is the state of evidence. The trial Court held that this evidence was quite believable, and therefore, he recorded a finding that the quit notice served on the defendant. The appellate Court on the other hand appears to be more impressed by the testimony of the defendant who merely stated that he did not receive this notice. In fact, the case of the defendant was that he was out of Yavatmal on 9th. The appellate Court, however, without anything on record held that the defendant was out of Yavatmal from 9th to 12th. The evidence of the Postman came to be disbelieved in spite of the reply given by the defendant that he does not remember whether he accepted the money order on 12-9-1981. On this evidence the Appellate Court disagreed with the trial Court and held that the notice was not served on the plaintiff. As far as the notice sent under the Certificate of Posting is concerned, a postal receipt has been filed on record and it has been accepted. There is thus no question that this letter was not posted. The only case put forth by the defendant was that, he did not receive this notice. The trial Court held that there is a presumption available under S. 114 and more particularly illustrated by illustration (F) which enables the Court to draw an inference that the letter was received by the addressee. The Appellate Court, however, disagreed with the trial Court and observed that the only presumption available under S. 114 of the Evidence Act was that the said letter was posted. According to the Appellate Court, the presumption did not go an inch further. In short, the Appellate Court held that there is no presumption that the letter reached the addressee, in spite of the provision in S. 114 of the Evidence Act .

3. It is on these two findings that the Appellate Court disagreed with the trial Court and recorded a positive finding that the quite notice was served. It is only on this finding that the suit for eviction came to be dismissed.

4. Mr. Mehadia, the learned advocate for the petitioner strenuously urged before me that the learned District Judge has committed not only an error of law, but also an error of jurisdiction in basing his finding son the facts which were not stated in the pleadings and in ignoring the relevant facts which were brought on record. According to Mr. Mehadi, if the facts as they stand on record are considered the irresistible conclusion would be, an evidenced by the testimony of Mr. Dhurve, that the registered packet was tendered to the defendant, but it was refused, which in turn would lead to the inference that the letter was received and refused. Another argument of Mr. Mehadia was that the Appellate Court committed an error in not stretching the presumption as a was permissible under S. 114 of the Evidence Act , in as much as the Appellate Court observed that there was a presumption only regarding the posting and not regarding the reaching of the letter to the addressee. There appears to be considerable force in what Mr. Mehadia says. Section 114 of the Evidence Act permits the Court to presume the existence of any fact which the Court things likely to have haled, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of a particular case. IIIustrations are given below this section and illustration (F) would permit the Court in normal conditions to presume that the common course of business had been followed in particular case. It is true that this presumption is rebuttable. Every party can bring evidence before the Court to show the existence of some abnormal circumstances which can justifiably negative the presumption. For example. S. 114 permits the Court to draw a presumption that the common course of business has followed in particular case. For example, if a letter is posted, there is a presumption available that if reached the addressee. This presumption, however, could be rebutted by proving that the usual course for the posting was interrupted they disturbances. Looking to this provision of law as a whole, what emerges by proving that a letter has been posted, is that the Court can justifiably draw a conclusion that if has reached the addressee. The defendant then could have an opportunity to prove some facts which would negative this presumption.

5. The defendant, however, has not led any evidence to show that there was any abnormality as a result to which the letter could not have reached the addressee. On the other hand, what was placed by the defendant was a mere denial. It was not even the case of the defendant that the received the letter, but not in good time so as to make a notice of 15 clear days as contemplated under s.106, T.P. Act . this was never any defence raised during the trial, I am pointing out this, particularly because the appellate Court has observed in the judgment something which was never said before the Court. the Appellate Court observed.

"So far as notice under certificate of posting is concerned, beyond the presumption that the letter addressed to the addressee was posted, it does not go further. Therefore, proof of posting and the non-return of the said letter cannot be accepted as a proof that the letter reached the addressee in due time and it cannot be accepted as a proof of service of notice in due time. The parol evidence on record

shows that the appellant was not in Yavatmal till 12th September, and therefore, there is every possibility of the notice sent under certificate of posting landing in the hands of the appellant some time after 12th. Under these circumstances, it cannot be said that the notice was received by the appellant in such a time that it left a clear margin of 15 days between the receipt of the notice by the appellant (if at all) and the date of termination of the tenancy."

6. It appears that the Appellate Court has had some assumptions while deciding this matter. It assumed that though this notice under Certificate of Posting might have been sent on 9-9-1981, still it would have been received by the defendant late, so that 15 days could not have been intervened between the receipt of the notice and the date of determination of tenancy. This observation was uncalled for and it can be said with a good degree of certainty that something irrelevant was assumed for coming to this conclusion.

7. As far as the presumption available under s. 114 of the Evidence Act is concerned, reliance was placed on Sharad Vs. Vishnu, . This Court held that there was a presumption available though that presumption was not irrebuttable. According to this Court, that presumption would be rebuttable and if the contrary proof is given, the landlord will not be able to bank upon the presumption for the purpose of contending that the tenancy of the defendant should be treated as validly terminated simply because the notice was sent by registered post. Similar view was taken in P.A. Kowli v. Narayan 1981 Mh LJ 355.

8. Mr. Mehadia, thelearned advocate for the petitioner strenuously contended before me that the view taken by the learned District Judge, on the background of what has been stated here in above, cannot be accepted. According to him, the revisional jurisdiction can be exercised because there is not only an error of fact or law. but there is a case of exercise of the jurisdiction with illegality or material irregularity. Mr. Bapat on the other hand contended before me that there may be an error of fact of law, but as long as there is no jurisdictional error, this Court cannot interfere with the findings recorded by the lower Appellate Court. a tremendous case law was brought to my notice. A general view has been taken by all the Courts that a Court of revisional jurisdiction would not be normally justified in interfering with the findings of facts. There is also a consistent view that errors of facts of law not concerned with jurisdiction also cannot be a ground for interference in the revision. There is, however, some debate regarding the third category apart from the two, viz. (I) Assuming jurisdiction without any jurisdiction being vested in the Tribunal, and (ii) Failure to exercise the jurisdiction which is vested in the Tribunal. As far as these two categories are concerned, the view taken by all the Courts has been consistent. Even regarding the third category viz., exercise of jurisdiction illegally or with material irregularity, the view has been more or less consistent. In Prem Raj Vs. D.L.F. Housing and Construction Pvt. Ltd. and Another, , the plaintiff had instituted a suit for rescission of contract and in the alternative for specific

performance of the said contract. The trial Court rejected the first relief. But granted the second relief. When the matter came to the High Court in revision, the High Court held that in view of the main relief claiming the rescission of the contract the alternative relief of specific performance of contract can never be granted in law, and therefore, exercising its revisional jurisdiction, the order of the trial Court was interfered with. The matter went to Supreme Court. the main argument before the Supreme Court was that the High Court acted wrongfully in interfering with the order of the trial Court. It was urged that the finding of the trial Court did not involve any question of jurisdiction and the High ''Court had fallen in an error in reversing the findings of trial Court on Issue No.4. the Supreme Court observed (at p. 1358 of AIR).

"It is manifest that in holding that the appellant was entitled in the alternative to ask for the relief of specific performance, the trial Court had committed an error of law and so had acted with material irregularity or illegality in the exercise of its jurisdiction within the meaning of s. 115(c) of the Civil P.C. It was therefore, competent to the High Court to interfere in revision with the order of the trial Court on this point. To put it differently the decision of the trial Court on this question was not a decision on a mere question of law but it was a decision on a question of law upon which the jurisdiction of the trial Court to grant the particular relief depended. The question was, therefore, one which involved the jurisdiction of the trial Court; the trial Court could not, by an erroneous finding upon that question, confer upon itself a jurisdiction which it did not possess and its order was, therefore, liable to be set aside by the High Court in revision."

9. This Court in Appellants: Merwanji Fardoonji Sethna Vs. Respondent: Antelo Custodio Correa, had an occasion to consider this point. That was the litigation under the Bombay Rents. Hotel and Lodging House Rates Control Act . sub-clause (ii) of S.13 (3)(B) (b) was deleted by Act 61 of 1953. The question which came before the High Court was regarding the interpretation of this clause. The trial Court had already given its interpretation. When the matter came before the High Court, it was urged that it was after all a revisional jurisdiction and it was not proper for the High Court to interfere with the findings of the trial Court howsoever wrong they may be. It was also contended that the findings recorded by the trial Court had absolutely no concern with the jurisdiction. In para 10 of the judgment, the Division Bench of this Court observed:

"It was argued before us by the leaned Counsel for the opponent that this is a revisional application, and at best question of construction of Section, (sic) and therefore we should not interfere. If it were so simple as that, we would not have hesitated to dismiss this application. The question, however, is one which involves the jurisdiction of the Court to award possession of the property in dispute to the plaintiff. In view of this fact and in view of the importance of the question involved we could not in fairness refuse to entertain this application."

10. Mr Bapat, the learned advocate for the respondent placed reliance on Shri M.L. Sethi Vs. Shri R.P. Kapur, .The order of discovery was challenged before the High court in revision and the High Court interfered with that order. The high Court order came to be challenged before the Supreme Court , The Supreme Court took review of all the exiting have as far as the scope of S. 115 of the Code of Civil observed (at p. 2384 of AIR):

" ..... erroneous decision on a question of lw rached by the subordinate Court which has no relation to questions of jurisdiction of that Court, cannot be corrected by the High Court under S. 115."

it is true that erroneous decesion on a question of law may not justify the interface. But there is acategory of cases where a jurisdiction might have been exercised illegally or with material irregularity. This category permits the High Court to exercise its revisional jurisdiction contemplated under S. 115, C.P.C.

11. The Supreme Court in Ajantha Transports (P) Ltd., Coimbatore Vs. T.V.K. Transports, Pulampatti, Coimbatore District, observed (at p. 132):

"Relevancy or otherwise of one or more grounds of grant or refusal of a permit could be a jurisdictional matter. A grant or its refusal on totally irrelevant grounds would be ultra vires or a case of excess of power. If a ground which is irrelevant is taken into account with others which are relevant, or a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power under S. 47 of the Act , which is quasi-judicial, in a manner which suffers from a material irregularity.

Both will be covered by S. 115, Civil P.C."

12. The consensus of the views takes us to a position that a position that a specific category is recognised by S. 115(c) of the C.P.C and exercise of jurisdiction illegally or with material irregularity is made as one of the grounds for exercising its jurisdiction, that may come within the scope of "exercise of jurisdiction illegally. If the Court commits the procedural mistake which results in injustice that may come within the category of "exercising" jurisdiction with material irregularity".

13. So many authorities including N.M. Nayak Vs. Chhotalal Hari Ram and Others, ; Jal Hirji Taraporevala Vs. K.A. Hamid, ; Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, ; D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, ; Managing Director (MIG), The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, ; Bhojraj Kunwarji Oil Mill and Ginning Factory and Another Vs. Yograjsinha Shankarsinha Parihar and Others, ; Gangu Pundlik Waghmare Vs. Pundlik Maroti Waghmare and Another, and Rajaram Nathuji Pathode and Another Vs. Maniram Sambha Kose and Others, were relied upon. It is not necessary to refer for these authorities in details. What can be found from the authorities that are quoted above is that, exercising

jurisdiction illegally can also be a ground along with the exercise of jurisdiction not vested and failure to exercise jurisdiction vested.

14. if we look to the facts of the present case, on this background , leaving apart the notice sent by Registered Post, there is a well established uncontrovertible position that a notice was sent to the defendant under the Certificate of Posting on 9-9-1981. The certificate of posting is produced on record. The only defence is that the defendant did not receive, this. It is not the defence that he received it late so as to make the notice bad in view of S. 106. P. Act . The plaintiff urged that in view of the proof of the certificate of posting, a fulfledged presumption was available to him under S. 114 of the Evidence Act and he, therefore, urged the Court to presume that the notice posted on 9-9-1981 must have reached the addressee ''in due course. There is no dispute that this presumption is available under S. 114 of the Evidence Act and this presumption can be rebutted only by adducing positive evidence. A mere denial in not potent enough to rebut this presumption as has been held in Sharad Vs. Vishnu, . The trial Court (appellate Court) committed an error initially when it observed that the presumption stretches only up to the posting of the letter and not an inch beyond that. This is definitely contrary to the law laid down is S. 114 of the Evidence Act . there need not be any presumption for posting, because that matter has been proved by filing a certificate of posting on record. The party does not require any presumption for that. That is a matter of record and the record has been produced before the Court. presumption is regarding the existence of fact which is likely to have happened. Once a letter is posted, the fact likely to happen is that that letter must have reached the addressee. There is no dispute in the case that the address was not correct. Thus the presumption available to the plaintiff was that the letter must have reached the addressee in the normal course once the factum of posting of that letter was proved by a certificate of posting. The trial Court did not however accept this and it observed that the presumption could stretch only up to the posting and not beyond that. This according to me is an illegality in exercising the jurisdiction and this Court would be justified in correcting that illegality while exercising its revisional jurisdiction.

15. Thus, from the fact that the rejection of evidence of P.W. 2 tilts towards perversity, there is an apparent error in limiting the scope of the presumption available under s. 114 and this amounts to illegality in exercising jurisdiction and this Court would be justified in interfering with the judgment of the trial (appellate) Court.

16. IN result, it must be said that the learned District Judge was not justified in artificially restricting the scope of presumption available under S. 114 of the Evidence Act . The presumption must be stretched to its logical extent and the Court would be justified in presuming that the letter once posted must have reached the addressee there being no evidence in the rebuttal. Thus the finding recorded by the trial Court that the notice was tendered and was refused is more acceptable than

the findings of the Appellate Court.

17. In result, there is no escape from the conclusion that the quit notice has been served. The inescapable conclusion that has to follow is the acceptance of the norm as it is laid down before the Court. The trial Court was, therefore, quite justified in passing the decree of eviction. The Appellate Court was not at all justified in upsetting that decree on irrelevant considerations, with the result the revision succeeds. The decree passed by the appellate Curt allowing the appeal and rejecting the plaintiff suit is hereby set aside and in its place the decree passed by the trial Court is restored. Rule is thus made absolutes in terms above. The respondent shall bear the costs of the petitioner throughout.

18. Order accordingly.