

PETITIONER:
KESHAVLAL JETHALAL SHAH

Vs.

RESPONDENT:
MOHANLAL BHAGWANDAS & ANR.

DATE OF JUDGMENT:
02/04/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HIDAYATULLAH, M. (CJ)
SIKRI, S.M.
BACHAWAT, R.S.
MITTER, G.K.
VAIDYIALINGAM, C.A.
HEGDE, K.S.

CITATION:
1968 AIR 1336 1968 SCR (3) 623
CITATOR INFO :
R 1973 SC 566 (7)
D 1973 SC1227 (51,55)
F 1973 SC1336 (5)
R 1986 SC1760 (35)

ACT:
Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947, s. 29(1) and (2)-amended by Gujarat Act 18 of 1965-whether amended s. 29(2) applied to a case where decision of appellate Court given before the amended section came into force-or if High Court could only exercise power under v. 115 C.P.C. in such case.

HEADNOTE:
In a suit filed by the respondent in July 1958 for a decree in ejectment, arrears of rent and other dues against the appellant in respect of certain premises in Ahmedabad, the trial court dismissed the claim for ejectment and passed a decree for arrears of rent and permitted increases. in appeal under s. 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act 57 of 1947 the decree was confirmed on February 25, 1963. By s. 29(2) of that Act, as it then stood, no appeal lay against any decision in appeal under sub-section (1) from the order of the trial court. The respondent therefore moved the High Court by a petition under s. 115 CPC. While this petition was pending Bombay Act 57 of 1947 was amended by Gujarat Act 18 of 1965 and it was provided in the amended s. 29(2) that while no appeal would lie against any decision in appeal under sub-section (1). the High Court may, for the purpose of satisfying itself that a decision in appeal was according to law, call for the case and pass such order as it thinks fit. On the assumption that the amended Act applied to, all petitions pending before it, the High Court, after a detailed examination of the case, reversed the order of the appellate court and decreed the respondent's suit.
In appeal by special leave to this Court, it was contended,

inter alia, by the appellant that the order of the appellate court which had acquired finality, subject to the exercise of the limited jurisdiction by the High Court under s. 115 C.P.C. could not be set aside in exercise of the jurisdiction under the amended s. 29(2) in the absence of a provision in the Amending Act making the amendment retrospective.

HELD : The High Court exercised the jurisdiction invested by Act 18 of 1965 in respect of a judgment which had become final a long time before that Act. The appeal must therefore be allowed, the order passed by the High Court set aside and the proceedings remanded to the High Court to deal with and dispose of the revision application on the footing that it was governed by s. 115 C.P.C. under which it was purported to have been filed. [630 G].

When the revision application was entertained under s. 115 of the Code of Civil Procedure 'the High Court assumed to itself a limited jurisdiction conferred by I that selection, and in the absence of any express provision made in the Amending Act, the jurisdiction conferred by that section could not be extended. [629 H-630 B].

There is nothing in the language of s. 29(2) as amended, which may indicate that it was intended to be retrospective in operation. [630 D]

624

Indira Sohan Lal v. Custodian of Evacuee Property, Delhi [1955] 2 S.C.R. 1117 and Moti Ram v. Suraj Bhan [1960] 2 S.C.R. 896; distinguished.

Vora Abbasbhai Alimohammed v. Haji Gulamnabi Haji Safibhai, [1964] 5 S.C.R. 157; Colonial Sugar Refining Company Ltd. v. Irving, [1905] A.C. 369; Garkipati Veeravva v. N. Subbaih Choudhary [1957] S.C.R. 488 Nana Bin Aba v. Sheku Bin Andu I.L.R. 32 Bom. 337 and Dafedar Niranjan Singh & Anr. v. Custodian, Evacuee Property (Punjab) & Anr. [1962] 1 S.C.R. 214; referred to.

In conferring upon the High Court a wider jurisdiction for the purpose of determining whether the decision of the appellate court was according to law, the Legislature did not attempt to legislate in the matter of procedure. It expressly sought to confer upon the High Court power to reopen questions which till then were to be deemed finally decided. [630 C].

Section 29(2) as amended in terms confers jurisdiction upon the High Court to call for the record of a case for the purpose of satisfying itself that the decision in appeal was according to law, which the High Court did not possess before the, date of the Amending Act. It could not be said that the amending clause only sought to explain any pre-existing legislation which was ambiguous or defective. [630 D-E].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1271 of 1967.

Appeal by special leave from the judgment and decree dated March 2, 3, 1967 of the Gujarat High Court in Civil Revision Application No. 1010 of 1963.

B....C. Misra R. K. Mathur and M. V. Goswami, for the appellant.

S. K. Iyer and K. L. Hathi, for the respondents.

Order of Reference

Shah, J. This appeal raises the question whether a revision petition filed in the High Court under S. 115, -Civil

Procedure Code, from an order passed by an appellate court under s. 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act 1947 may after the amendment of s. 29(2) by the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Amendment) Act, 1965 be tried in accordance with the amended Act. The High Court assumed that a proceeding pending before it at the date on which the amending Act came into force had to be dealt with and decided in accordance with the provisions of subsec. (2) of s. 29 as amended.

There is no dispute that s. 29(2) as amended has not expressly been given retrospective operation. In *Colonial Sugar Refining Co. Ltd. v. Irving*(1), the Judicial Committee held that "while provisions of a statute dealing merely with matters of procedure

(1) [1905] A.C. 369

625

may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are, not to be applied retrospectively in the absence of express enactment or necessary intendment". The Judicial Committee further observed that "provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights." The same principle has been affirmed by the Judicial Committee in a later decision in *Delhi Cloth and General Mills v. Income-tax Commissioner, Delhi*(1).

In *Indira Sohan Lal v. Custodian of Evacuee Property Delhi*(2), one of the points decided by this Court in dealing with a case under the Evacuee (Administration of Property) Act, 1947, as amended in 1948, was that even if at the date when an application was made for confirmation of a transaction of exchange by an evacuee, the order of the Custodian was to be deemed final, if by an amending Act passed before the order was made, the order was subject to revision by the Custodian General, the order of the Custodian was denuded of its finality,. In *Dafedar Niranjan Singh and Another v. Custodian Evacuee Property (Pb.) and Anr.*(3) this Court held that where an order of the Custodian had become final under the Patiala Evacuee (Administration of Property) Ordinance, its finality could not be affected retrospectively under s. 58(3) of the Administration of Evacuee Property Act, 1950 which replaced the Ordinance. The Court distinguished the observations made in *Indira Sohan Lal's case*(2). Another judgment to which our attention was invited is *Moti Ram v. Suraj Bhan*(4) in which this Court observed that according to the decision in *Indira Sohanlal's case*(2) an appellate decision under s. 5B of the East Punjab Evacuees' (Administration of Property) Act, 1947 acquires finality after the order in question is made, and "Oven if there be in law any such right at all it can in no sense be a vested or accrued right", and therefore notwithstanding the declared finality of the judgment of the Controller under the Evacuee Property Urban Rent Restriction Act, 1947, when the petition for ejectment was filed, the Act having been amended, the High Court invested with revisional jurisdiction by s. 15(5) was competent to revise the order of the Controller. This Court observed that the finality of the order of the Controller attached thereto only when the order was made and therefore if before the date on which the order was made, by amendment of the Act, the order ceased to be final, a revision application to the High Court was competent.

(1) (1927)L.R.54 I.A.--421.

- (2) [1955] 2 S.C.R. 11 17,
 (2) [1962] 1 S.C.R. 214.
 (4) [1960] 2 S.C.R. 896.

626

It is true that in the present case the order of the City Civil Court was made before the amending Act was enacted. Under the Rent Act before it was amended, no further appeal lay from the decision of the Appellate Court, but the jurisdiction of the High Court under S. 115 Code of Civil Procedure was not on that account excluded. By the amended Act the High Court is expressly invested with revisional jurisdiction, which is not subject to the restrictions prescribed by s. 115 of the Code of Civil Procedure. The result is that the revision petition when originally filed was triable under s. 115-Civil Procedure Code; it has been tried by the High Court under the amended s. 29(2) of the Rents, Rates Control Act.

Indira Sohanlal's case(1) has made a departure from what was apparently a settled rule. The question in this case is whether the rule in Colonial Sugar Refining Company's case(2) will apply, or the exception engrafted upon the rule by the judgment in Indira Sohanlal's case(1) will apply. We direct that this case be placed before a larger Bench. It will be open to the parties to argue such other points as arise out of the order of the High Court, but subject to the restrictions imposed by the order granting rule.

The Judgment of the Court was delivered by

Shah J. The respondents sued the appellant for a decree in ejectment in respect of shop Municipal Census No. 1754 at Ahmedabad and for rent in arrears and additional taxes. The trial court dismissed the claim for ejectment and passed a decree for arrears of rent and permitted increases. In appeal under S. 29 of the Bombay Rents, Hotel and Lodging House Rate, Control Act 57 of 1947, the decree was confirmed on February 25, 1963 By S. 29(2) of that Act, as it then stood, no appeal lay against any decision in appeal under sub-s. (1) from the order of the Court of First Instance. The respondent accordingly moved the High Court of Gujarat by a petition under s. 115 of the Code of Civil Procedure. When this petition was pending in the High Court Bombay Act 57 of 1947 was amended by Gujarat Act 18 of 1965, and sub-s. (2) of s. 29 was replaced by the following' sub-section :

"No further appeal shall lie against any decision in appeal under sub-sec. (1), but the High Court may for the purpose of satisfying itself that any such decision in appeal was according to law call for the case in which such decision was taken and pass such order with respect thereto as it thinks fit."

On the assumption that by the amended Act the High Court was empowered to decide all petitions pending on the date on which

- (1) [1955] 2 S.C.R. 1117.
 (2) [1905] A.C. 369.

627

the amended section came into operation, as if the amended section applied thereto, the High Court entered upon a detailed investigation of the questions raised by the respondent in the petition(1) whether the tenant proved that he was ready and willing to pay the standard rent and permitted increases within the meaning of s. 12(1) of the Act; (2) whether the tenant was in arrears of standard rent and permitted increases and the amount of tax for more than six months, and therefore the case fell within the pur-

view of s. 12(3) (a) and not under s. 12(3) (b) of the Act; and (3) whether in any event the tenant having failed to observe the conditions of the tenancy was disentitled to the protection either, under s. 12(1) or s. 12(3) (b) of the Act, and reversed the order of the appellate court and decreed the respondents suit.. With special leave, the appellant has appealed to this Court.

This Court in Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safibhai(1) held that in a petition under s. 115 of the Code of Civil Procedure from an order made by the appellate court under s. 29 of Bombay Act 57 of 1947, the High Court had no power to set aside the order merely because if was of opinion that the judgment was assailable on the ground of error of fact or even of law: the High Court may exercise its power under that section only if the appellate court had acted without jurisdiction or had failed to exercise its jurisdiction or had acted with material illegality or irregularity in the exercise of its jurisdiction. Thereafter the Gujarat Legislature amended s. 29(2) by Act 18 of 1965 in the manner set out, so as to confer upon the High Court a jurisdiction wider than the jurisdiction exercisable under s. 115 of the Code of Civil Procedure.

Counsel for the appellant contended that in entering upon an enquiry into the questions raised by the respondent, the High Court exercised jurisdiction which it did not possess. Counsel contended that the right to appeal and which expression includes the right to move a superior court in exercise of the revisional jurisdiction-attaches to a litigation when it commences and it is not affected by any subsequent amendment unless an express provision is made giving retrospective operation to the amendment and that the right to appeal which originally attached to the litigation will continue to govern it till it is finally decided. Counsel relied in support of that contention upon the decisions in Colonial Sugar Subbiah Choudhurt(3); and Nana Bin Aba v. Sheku Bin Andu(4).

In the alternative counsel contended that the order of the appellate court which had acquired finality, subject to the exercise of the limited jurisdiction by the High Court under s. 115 of the

(1) [1964] 5 S.C.R. 157.

(3) [1957] S.C.R. 488.

(2) [1905] A.C. 369.

(4) I.L.R. 32 Bom. 337

628

Code of Civil Procedure could not, in the absence of a provision in the Amending Act making the amendment expressly or by necessary implication retrospective, 'be set aside in exercise of the jurisdiction conferred upon the High Court by s. 29 (2) of the Amending Act enacted after the date on which the judgment of the appellate court was delivered. We do not think it necessary to express any opinion on the first question, because, in our judgment, on the second point raised by counsel, the appeal must succeed.

The suit out of which this appeal arises was filed by the respondent on July 22, 1958; it was decided on October 28, 1961; the appellate court decided the appeal on February 25, 1963 and the Amending Act 18 of 1965 came into effect on June 17, 1965. The High Court exercised the jurisdiction invested by Act 18 of 1965 in respect of a judgment which had become final a long time before that Act. It is true that this Court in Indira Sohanlal v. Custodian of Evacuee Property, Delhi & Others(1) distinguished the judgment of the Judicial Committee in the Colonial Sugar Refining Co.

Ltd.'s case (2) and observed at p. 1133

".....it appears to be clear that while a right of appeal in respect of a pending action may conceivably be treated as a substantive right vesting in the litigant on the commencement of the action-though we do not so decide-no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action. By the very terms of section 5-B of East Punjab Act XIV of 1947, finality attaches to it on the making of the order. Even if there be, - in law, any such right at all as the right to a determination with the attribute of final, it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made, when alone the right to finality becomes an existing right as in....."

In Indira Sohanlal's case(1), the Court was dealing with a case in which by amendment of statute, the finality which would but for the amendment have attached was taken away before the order was made. This Court in Dafedar Niranjana Singh and Another v. Custodian Evacuee Property (Punjab) and Another(3) distinguished Indira Sohanlal's case(3) and held that an order which had become final under a provision of the law could not be affected retrospectively under an Amending Act so as to deprive the order of its finality acquired under the original provision. In Dafedar Niranjana Singh's case(3) an order releasing the property in dispute was passed by the Custodian of Evacuee Property under Patiala Ordinance No. IX of 2004 Samvat. No appeal was filed against

(1) [1955]2S.C.R.1117.

(2) [1905]A.C.369.

(3) [1962] 1 S. C. R. 214.

629

the order of the Custodian and it became final on that account. The order was however set aside by the Custodian in exercise of jurisdiction under s. 58(3) of the Administration of Evacuee Property Act 31 of 1950. This Court held that since the order had become final in exercise of the jurisdiction subsequently conferred. in the absence of any positive indication giving s. 58(3) retrospective operation, the finality of the previous order could not be taken away.

Counsel for the respondent relied upon a judgment of this Court in Moti Ram v. Suraj Bhan and Others(1) in which following Indira Sohanlal's case (2) it was held that the High Court could in exercise of jurisdiction under an Amending Act enacted after the litigation was commenced, set aside an order which, according to the law in force at the date when the litigation was commenced, was not subject to the jurisdiction of the High Court. In Moti Ram's case(1) an application for eviction of the appellant from a shop was made in August 1956 under s. 13 of the East Punjab Urban Rent Restriction Act, 1949. An appeal was provided under s. 15 of the Act from the order of the Rent Controller, and sub-s. (4) of s. 15 provided that the decision of the appellate authority, and subject only to such decision, the order of the Controller shall be final. By Amending Act 29 of 1956 which came into force on September 24, 1956, the High Court was empowered to call for and examine the records relating to any order passed under the Act for satisfying itself as to the legality or propriety of such order. The

landlord's application was dismissed by the Rent Controller and in appeal the appellate authority confirmed the order. Thereafter on the application of the landlord the High Court reversed the order. This Court rejected the contention that the High Court had no jurisdiction to entertain the revision application under s. 15(3) as amended. The decision brought before the High Court in exercise of its revisional jurisdiction under s. 15(5) of the amended Act was delivered on August 19, 1958, after amendment of the Act on September 24, 1956. On the date on which it was made, the order had acquired no finality, for it was subject to an order which may be passed in a revision application which may be filed before the High Court under the amended Act. Moti Ram's case(1) has, therefore, no application to this case. Counsel for the respondent urged that the extension of the jurisdiction of the High Court by s. 29(2) of Bombay Act 57 of 1947 as amended by Gujarat Act 18 of 1965 related not to any right in existence, but to a matter of procedure, and on that account the Act as amended applied at the hearing, and in deciding the revision application filed by the respondent the High Court

(1) [1960]2S.C.R.896.

(2) [1955] 2 S.C.R. 1117,
630

was bound to apply the amended Act. But when the revision application was entertained under S. 115 of the Code of Civil procedure, the High Court assumed to itself a limited jurisdiction conferred by that section and in the absence of any express provision made in the Amending Act, the jurisdiction conferred by that section could not be extended. The question whether the High Court could in exercise of its jurisdiction set aside, modify or after the decision of the appellate, court was not a matter of procedure. The order of the appellate court, subject to scrutiny by the High Court within the limited field permitted by S. 115 of the Code of Civil Procedure, was final. In conferring upon the High Court a wider jurisdiction for the purpose of determining whether the decision of the appellate court was according to law, the Legislature did not attempt to legislate in the matter of procedure. The Legislature expressly sought to confer upon the High Court power to reopen questions which till then were to be deemed finally decided.

Counsel for the respondent also submitted that s. 29(2) as amended was intended to have retrospective operation, because the Amending Act was in the nature of explanatory legislation. There is nothing in the language of S. 29(2) as amended, which may indicate that it was intended to be retrospective in operation. Section 29(2) as amended in terms confers jurisdiction upon the High Court to call for the record of a case for the purpose of satisfying itself that the decision in appeal was according to law, which the High Court did not possess before the date of the Amending Act. The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from s. 115 Code of Civil Procedure, and the Legislature has by the Amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2). before it was enacted, was precise in its implication as well as in its expression : the meaning of the words used was not in doubt, and there was no omission in its

phraseology which was required to be supplied by the amendment.

The appeal is therefore allowed and the order passed by the High Court is set aside, and the proceeding is remanded to the High Court to deal with and dispose of the revision application on the footing that it is governed by s. 115 of the Code of Civil Procedure under which it purports to have been filed. The costs of this Court will be costs in the High Court.

R.K.P.S.

Appeal allowed.

631

JUDIS