
(1946) 05 AHC CK 0025
In the Allahabad High Court
Case No : Civil Revision No. 37 of 1916

Allah Rahul Almin through Syed Mohd. Mahbub Ali	APPELLANT
Vs	
Ganga Sahai and Others	RESPONDENT

Date of Decision : 07-05-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3

Citation : (1946) 05 AHC CK 0025

Hon'ble Judges : Pathak, J;Malilk, J;Braund, J

Bench : Full Bench

Advocate : K.C. Mital, for the Appellant; S.B.L. Gour and A.P. Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

Malik, J.—This revision was filed u/s 115 of the CPC Code. Mr. K.C. Mital was the counsel for the applicant. On February 4, 1946, the revision was put in the list of cases to be heard on that date, before a learned single Judge of this Court- At the time when the case was called learned Counsel for the applicant was not present in Court, nor had he sent an engagement slip, as provided for in the Rules of this Court so that his case could be passed over on the ground that he was busy in another Court. The circumstances under which he was prevented from appearing were explained by him, but that is not a matter which is relevant to the questions for decision at this stage.

2. The learned single Judge went through the judgment under revision and felt satisfied that it was a fit case where he would like to interfere in the exercise of the revisional jurisdiction of this Court. He therefore, delivered a judgment dismissing the revision on the merits and signed the judgment.

3. After the judgment had been delivered and signed, but before it was sealed with the seal of this Court, by the Bench clerk, Mr. Mital appeared and prayed for a rehearing.

4. Mr. Mital relied upon a practice which, he said, prevailed in this Court of learned Judges permitting a rehearing of a case even after the judgment was delivered and signed but where it had not been sealed, in case learned Counsel was able to satisfy the Judge that there was sufficient cause for his non-appearance at the earlier stage.

5. As the matter related to a so called practice of this Court, relied on by learned Counsel for the applicant, the learned single Judge considered that the point was of sufficient importance to be decided by a larger Bench.

6. The questions for consideration by the Bench formulated by him were as follows:

(a) When a Judge of the High Court has once delivered and signed a judgment on the merits in a revision case ex-parte before him, is it competent to such Judge to recall and alter that judgment at the request of the either party;

(b) If it is regulated by law, then what is the law in such a case; and

(c) If it is regulated only by the practice of the Court, then, what is the practice of this Court.

7. This Bench was constituted for the consideration of these three questions.

8. Learned Counsel for the applicant has urged two points, firstly, that there is no legal bar to our rehearing a case if the ends of justice demand the same and Order 20, Rule 3 Code of CPC does not apply to such a case: and secondly, so long as the judgment has not been sealed there is no completed judgment and the case remains still undisposed of for the Court to rehear the case if it so desires.

9. As regards the procedure to be followed in the disposal of cases, Section 117 of the CPC (Act v. of 1908) provides that save as provided in Part IX or in Part X or IN the rules, the provisions of the Code shall apply to Courts constituted by His Majesty by Letters Patent. The relevant rules contained in the First Schedule of the Code so far as they are necessary for our purposes are:

Order 20, Rule 1. "The Court, after the cases has been heard, shall pronounce judgment in open Court, either at once or on some future day. of which due notice shall be given to the parties or their pleaders.

* * * *

Rule 3. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to, save as provided by Section 152 or on review," and Order, 49, Rule 2:

Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court," and Rule 3,

"The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extra-ordinary original civil jurisdiction, namely:

* * * *

(6) Rules 1 to 8 of Order XX." It would be noticed that Order 20, Rule 3 of the Code is inapplicable to judgments of Chartered High Courts delivered in cases coming under their ordinary or extraordinary original jurisdiction. By implication therefore Order 20, Rule 3 would apply to judgments of Chartered High Courts delivered in the exercise of their appellate or revisional jurisdiction. Apart from Section 117 which makes the rules in the First Schedule applicable to High Courts constituted by Letters Patent unless there is anything to the contrary. Section 107 (2) provides:

Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction.

10. There appears to be no valid reason why the powers of this Court to rehear a case should be different from the powers conferred on the Courts of original jurisdiction.

11. The provisions of Order 20, Rule 3 C.P.C., which are very clear, put an end to the contention of learned Counsel for the applicant, as they clearly lay down that after the judgment has been pronounced and signed the said judgment shall not be altered or added to except for the purpose of correcting a clerical or arithmetical error u/s 152 or on review.

12. Learned Counsel has, however, urged that Order 20, rule 3 of the Code does not apply to this Court by reason of Rule 2 of Order 49. Under rule 2 of Order 49 nothing in the First Schedule shall limit or otherwise affect any rules in force at the commencement of the Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court. Learned Counsel has relied on Chapter VII of the Rules of this Court which was in force at the commencement of this Code has urged that those Rules make the provisions of Order 20, rule 3 inapplicable. These rules were framed u/s 633 of Act XIV of 1882 which was as follows:

The High Court shall take evidence and record judgments and orders in such manner as it by rule from time to time directs.

and provide that the Reader of the Court shall affix the seal of the Court to the judgment or order after it is delivered and signed by the Judge. This seal is to be affixed not by the Judge but by the bench Reader. It would be really strange if it were held that the most important step, according to the submission of learned Counsel, which gives finality to the judgment, is a step which is left to be taken by a subordinate officer of the status of a Bench Clerk.

13. Order 49, Rule 2 Code of CPC saves the rules which had already been in

existene relating "to recording of a judgment or order, of a Chartered High Court i.e. the rules framed as to how its judgments should be given, whether orally or in writing or according to any mode which might appear to it best in the interests of justice and whether the judgments should be recorded in a particular book or with a particular seal --see *Sundar Bibi v. Bisheshar Nath* (1887) 9 All. 93. Order 49, Rule 2 Code of CPC or Chaptar VII. of the High Court Rules has nothing to do with the question whether a Judge can or cannot after his judgment after it has been pronounced and signed by him. I cannot, therefor, accept the contention of learned couasel that by reason of Order 49, Rule 2 of the CPC Code, Order 20, Rule 3 was not applicable to judgments pronounced and signed by a Judge of this Court. There is nothing in the Letters Patent or in any other provision of law which would justify this Court in disregarding the provisions of Order 20, Rule 3 which, by reason of Section 121, have the same force as if enacted in the body of the Code, though no doubt they are subject to any alteration or addition that this Court may, from time to time, make by rules framed u/s 122 of the Code.

14. Learned Counsel in a written argument, supplied after we had reserved judgment, has suggested that rules 1 to 40 of the First Schedule to the CPC must be confined to original trials and rules 41 to 44 alone apply to appellate Courts. We cannot accept this contention. The rules contained in Schedule I cannot be divided into such water-tight compartments and unless there are separate specific provisions for appellate Courts or there are anything in the rules to the contrary, such of the rules in Schedule I which are of general application are applicable to all Courts in accordance with the provisions of Section 117 and Section 107 C.P.C.

15. Learned Counsel has drawn our attention to a decision in *Jai Karan v. Panchaiti Akhara Nanak Shahi* A I R 1983 All 49. In that case the judgment had been signed by inadvertence by Sulaiman C.J. and it was on account that it was held that Order 20, Rule 3 was no bar and the case could be reheard and the judgment altered under the inherent jurisdiction of this Court.

16. Learned Counsel for the applicant cited several other cases, but they do not relate to the question whether the Judge is entitled to alter or add to a judgment after he has pronounced and signed the same. To my mind, we are bound by the provisions of Order 20, Rule 3 of the Code and hold that except within those well known limits where a Court can exercise its inherent jurisdiction, one of such cases being the case before Sulaiman C.J. *Jai Karan v. Panchaiti Akhara Nanak Shahi*", there is no inherent jurisdiction in the Court to rehear a case and alter or add to a judgment which has been duly pronounced and deliberately signed in accordance with law.

17. Learned Counsel for the applicant drew our attention to certain provisions of the Code of Criminal Procedure and certain deci-decisions of this Court under those provisions, but to my mind, we would rot be justified to go beyond the provisions of the CPC even though the language of the two Acts may, in certain respects, be similar.

18. For the reasons given above, I would answer the questions referred to us in this way that to the first question my answer is that it is not competent to a Judge who has once pronounced and signed a judgment to recall and alter that judgment at the request of either party. On thesecond question of my answer is that there is no law which would justify a Judge in recalling or altering a judgment except, may be, in those cases where the Court may have inherent jurisdiction to rectify its own mistake. And to the last question, my opinion is that no practice in derogation of law can grow or can be recognised.

Braund, J.

19. I agree and have nothing to add.

Pathak J.

20. I agree and have nothing to add.