
(1974) 10 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No"s. 2032 of 1971, 634 of 1972 and 687 of 1973

Bhera and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 04-10-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 5
Rajasthan Tenancy Act, 1955 — Section 229

Citation : AIR 1975 Raj 55 : (1974) RLW 504 : (1974) 7 WLN 800

Hon'ble Judges : B.P. Beri, C.J.;D.P. Gupta, J

Bench : Division Bench

Advocate : A.L. Mehta, in W.P. No. 2032 of 1971 and L.R. Mehta, in W.P. No. 634 of 1972 and in W.P. No. 687 of 1973, for the Appellant; L.R. Mehta in W.P. No. 2032 of 1971, M.B.L. Bhargawa and A.K. Bhandari for Non-Petitioner No. 2 in W.P. No. 634 of 1972 and N.L. Pareek, for R.S. Purohit in W.P. No. 687 of 1973, for the Appearing Parties

Final Decision : Allowed

Judgement

B.P. Beri, C.J.—These three writ petitions under Article 226 of the Constitution of India raise an identical question and can be disposed of by a single judgment. Different learned Members of the Board of Revenue by their judgments of different dates following the decision of the Full Bench of the Board of Revenue in *Madhosingh v. Motilal* 1971 RRD 194 declined to hear the three review petitions of the petitioners before us, on the ground that the judgments against which those review applications were made, were rendered by the Members who were no longer attached to the Board of Revenue and the petitions failed in view of the interpretation given to Order 47, Rule 5 of the CPC by the Full Bench of the Board of Revenue.

2. While the learned counsel for the petitioners before us contend that the view taken in *Madhosingh's* case 1971 RRD 194 (Board of Rev.) is erroneous, the learned counsel appearing for the non-petitioners supported it for the reasons

given therein.

3. In Madhosingh's case 1971 RRD 194 (Board of Rev.) the view taken by the learned Members of the Board of Revenue has been expressed in para. 53 of the judgment, which reads:--

"To sum up, the conditions for Rule 5 of Order 47 of the CPC to come into play are (i) that the Member or Members or any one of them who passed the decree or order sought to be reviewed continues or continue to be attached to the Court at the time when the application for review is presented, and (ii) that such Member or Members is not or are not precluded i. e. prevented, by absence of other cause for a period of six months next after the presentation from considering the decree or order sought to be reviewed. If these conditions are satisfied, only the Member or Members referred to shall hear the application. They may hear it within the period of six months or even after the expiry of that period. No other Member or Members can in the circumstances (i. e. if the said conditions are satisfied) hear the application, either within the six months or even after the expiry of that period. In that event, the bar against other Members hearing the application is a total bar. This prohibition applies to both the stages of hearing of the application, namely the ex parte hearing stage for admission, and if the application is admitted, the subsequent stage of hearing both parties after notice."

The above view was taken by the learned Members on the basis of the decision of the Travancore-Cochin High Court reported in *Sirkar v. Valayudhan Ponnai*. AIR 1953 TC 1 . In that case Sankaran, Gangadhara Menon, JJ. have taken the view which has been adopted by the Board of Revenue while Subramania Iyer, J. took a contrary view. Another Full Bench of the Travancore-Cochin High Court consisting of Sankaran, Govinda Pillai and Subramania Iyer, JJ. took a diametrically opposite view in *Narayanan v. Raman* AIR 1953 TC 306 .

4. We are in respectful agreement with the view taken in *Narayanan's* case AIR 1953 TC 306 and we shall presently state our reasons for so doing.

5. The remedy of review, which is a reconsideration of the judgment at the same level by which it was rendered, appears to have been borrowed from the Courts of Equity. There was no such remedy available at Common Law. This remedy has a remarkable resemblance with the remedy known as writ of error. Nevertheless, like appeal the remedy by way of a review is a creature of statute. Unless authorised by law expressly or by implication a right to ask for a review of a judgment delivered cannot be assumed. Therefore, in order to ascertain its authority and scope, reference will have to be made to the relevant statutes. The cases before us are revenue cases. Section 229 of the Rajasthan Tenancy Act lays down :--

"229. Power of review by Board and other Revenue Courts:-- Subject to the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) :-- (1) the Board of its own motion or on the application of a party to a suit or

proceeding, may review and may rescind. alter or confirm any decree or order made by itself or by any of its members; and

(2) every Revenue Court, other than the Board, shall be competent to review any decree, order or judgment passed by such Court."

The aforesaid provision is subject to the provisions of the Code of Civil Procedure, 1908, but what is remarkable to be noticed in the above section are the words that the Board may review any decree or order made by itself or by any of its members. This is indicative of the fact that the review is done by the Board as an entity regardless of the fact that the judgment might have been rendered by any of its members. These words, in our opinion, help us immensely in taking the view that we are adopting.

6. The power of review is conferred by Section 114 of the Code of Civil Procedure, which circumscribes the conditions in which a review could be sought. Mulla in his commentary on the Code of Civil Procedure. 13th Edition 1967 at page 1668 says,---

"A party aggrieved by a decree or a decision specified in Clause (1), (b) or (c) of Sub-rule (1) [see Section 114] may apply for a review in any of the following cases: I. on the ground of discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the party or could not be produced by him at the time when the decree was passed or order made: or

II. on account of some mistake or error apparent on the face of the record: or

III. for any other sufficient reason."

In our opinion, the first case serves the cause of truth provided, the seeker of the remedy could not place it before the Court earlier despite diligence. The second ground impliedly recognises the universally accepted principle of human fallibility. If there is an error manifest on the record due to human failing it should not be permitted to perpetuate an error and thereby defeat justice. The third ground has been interpreted by the Privy Council in *Chhaiu Ram v. Neki* AIR 1922 PC 112 to mean those causes which are analogous to the first two. Discovery of truth or human error or any other similar cause authorises a Court to reconsider its judgment already rendered for the obvious purpose of serving the cause of justice to the parties before it. Order 47, Rule 5 of the CPC reads as follows:--

"Order 47, Rule 5. Application for review in Court consisting of two or more Judges:-- Where, the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the

application, and no other Judge or Judges of the Court shall hear the same."

As the marginal note of the rule indicates, it lays down the procedure for the consideration of a review application by a Court which consists of two or more Judges. In our opinion, this rule means nothing more than this that where the Judge or Judges or any one of the Judges who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, such Judge or Judges alone shall hear the application, and no other Judge or Judges of the Court shall hear the same. This rule shall be adhered to even if such Judge or Judges is or are precluded by absence or other cause for a period of 6 months next after the application from considering the decree or order to which the application refers. This rule cannot be interpreted to mean that the right of review is totally barred if the Judge or Judges who heard the matter under review are not available due to retirement, resignation, transfer, physical inability or death or for any other reason (and) the applicant's right of review is lost. The waiting period of six months is the limit upto which the review application may be kept pending in the prospect of the return of the Judge or Judges. The view which has been taken in Velavu-dhan's case AIR 1953 Trav Co 1 and which has been adopted in Madhosingh's case 1971 RRD 194 is that if for any reason such Judge or Judges is or are not available when such an application comes to be considered then the right of review itself is totally barred. We regret, with respect, we are unable to agree with such a view. In our opinion, the intention of the Legislature was that if an error apparent on the face of the record is sought to be pointed out then Rule 5 provides that the Judge or Judges who had fallen into the alleged error should have an opportunity to reconsider it. The period of 6 months has been provided so that even at the expense of 6 months' delay if this rule could work it should be adhered to. It cannot be construed to mean that the right of review itself would stand negated if for some reason such Judge or Judges ceased to occupy the position or are not available for any length of time beyond 6 months. The language of the rule does not justify such an interpretation. Even if for the sake of argument we were to assume that the language of the rule is capable of such an interpretation which has been taken in Velayudhan's case or by the learned Members of the Board of Revenue, we would still reject such an interpretation for several reasons.

7. In *Frame v. Clement* (1881) 18 Ch D 499, Jessel M. R. observed :--

"We ought to adopt that interpretation which will make the law uniform, and will remedy the evil which prevailed in all the cases to which the law can be fairly applied."

(Quoted in *Craies on Statute Law*. Seventh Edition at page 95)

It would be anomalous to hold that the right of review would become unpredictable on the continuance or discontinuance of the Members of the Board of Revenue or the Judge of the Court. Such an interpretation would render the

availability of the remedy dependent on circumstances over which an applicant has evidently no control. Faith in the rule of law itself gets disturbed when the availability of a relief becomes erratic.

8. Order 47, Rule 5 of the CPC is basically a procedural statute. Sutherland Statutory Construction. Volume 3, (1943) Edition, para. 6802 makes the following significant observations :--

"Legislation designating the method of enforcing and establishing substantive rights, as a general rule, is enacted not for an end in itself, but to provide a better way of accomplishing an end. Statutes on procedure, then, have as their obvious purpose the providing of expeditious means whereby the plaintiff holding a cause of action may enforce his right, and the facilities whereby the defendant may interpose his defences. Therefore, the judiciary has generally been very generous in the treatment of statutes relating to procedure

An interpretation of a procedural statute which insures that a case will be considered on its merits so that substantive rights will be Presented is to be highly preferred. Mere technicalities should not be permitted to impede the trial of a case, and so an interpretation which is highly technical, or results in absurdity or iniustice is to be avoided."

9. It is easy to imagine that acceptance of an interpretation given by the Board of Revenue is likely to lead to strange results and anomalies. The review application of an applicant, however good in law, will be lost if official exigencies force a certain Member of the Board of Revenue to leave that office; whereas another applicant similarly situated may not suffer, from such a handicap. Procedural law is not erratic but is an instrument for the attainment of justice, and if the language can reasonably bear an interpretation of its uniform application, which in our opinion Order 47. Rule 5, Civil P. C. does, then such an interpretation alone can be given to it rather than an interpretation which tends to strange results and anomalies. A legal battle is ordinarily a conflict of interests and the procedural law is the accepted path on which would travel the process of settlement. This path has for its foundation principles of natural justice, sound reason and good conscience. Any interpretation which detracts from the certainty of the path or makes it freakish, anomalous or uncertain has to be avoided because it will lend unpredictability to the process,

10. One word more and we have done. The learned Members of the Board of Revenue in Madhosinsh's case 1971 RRD 194 have unfortunately not fully appreciated the full implications of Maji Mohan Kanwar and Others Vs. The State of Rajasthan and Another, That case governed an altogether different situation and has not taken the view which supports the Board's decision. As a matter of fact this authority says that even if one member of the Court out of those who heard the case is available the review application should be heard by him alone. We respectfully agree with the view.

11. The net result is that Madhosinsh's case 1971 RRD 194 has been wrongly

decided and resultantly the orders dated 22-1-1971" in writ petition No. 2032/71. dt. 12-1-1972 in writ petition No. 634/72 and dt. 13-2-1973 in writ Petition No. 687/73 passed by the Board of Revenue are quashed and it is directed to rehear the review applications in the light of the observations made above.

12. All the three writ petitions are accepted but there will be no order as to costs.