
(1968) 10 DEL CK 0005

In the Delhi High Court

Case No : Civil Revision Appeal No. 261 of 1967

Chandra Electrical and Another

APPELLANT

Vs

Victor Cables Corporation

RESPONDENT

Date of Decision : 25-10-1968

Acts Referred:

Citation : (1969) 5 DLT 129

Hon'ble Judges : I.D. Dua, C.J

Bench : Single Bench

Advocate : Nailash Narain and Tiryaogi Narain, for the Appellant;

Judgement

I.D. Dua, C.J.

(1) This is a defendants" revision and is directed against the order of a learned Subordinate Judge Ii Class, Delhi dated 28th April, 1967 declining to set aside his earlier order by means of which the defendants" defense had been struck off. The Court below has observed in the impugned order that according to the record the defendants had done their best to delay the case by not filing better particulars as ordered by the Court. More than four adjournments" had been granted to the defendants for this purpose, but they failed to do so and every time adjournment was sought on one pretext or the other No ground having been made out for setting aside the earlier order striking off the defense this application was dismissed.

(2) Before me, the learned counsel for the defendant-petitioner has submitted that the order striking off the defense was wholly unjustified and was indeed made contrary to the procedure prescribed. On this premise, it was contended that the order striking off the defense made on 1st February, 1967 be set aside by this Court on revision. On the basis of the submission made by the petitioners" counsel, I considered it proper to exercise suo motu powers of revision of this Court and called upon the plaintiff-respondent"s counsel to address me on the question of the revision being entertained against the earlier

order of 1st February, 1967. I have been taken through the record of the proceedings, which quite clearly show that the defendants had been deliberately and knowingly declining to comply with the order of the Court below for supplying better particulars of defense. I have gone through the plaint and the written statement did not comply with the provisions of the CPC and that denials were general and evasive. The defendant's pleadings did require further and better particulars which the defendants declined to supply on reasons which were considered by the Court below to be inadequate. Whether or not this Court would have considered those reasons to be adequate, is not the point which arises for consideration. What this Court has to look for is a vitiating circumstance in the impugned order justifying interference u/s 115, Civil Procedure Code. The jurisdiction and power of this Court on revision is circumscribed by the statute itself. While dealing with section 115 of the Code, Mahajan, J. (as he then was) observed in *Keshardeo Chamria v, Radha Kisen Chamria* as follows -

"17. We now proceed to consider whether a revision was competent against the order of 25th April, 1945, when no appeal lay. It seems to us that in this matter really the High Court entertained an appeal in the guise of a revision. The revisional Jurisdiction of the High Court is set out in s. 115, Civil P. C. 6. in these terms: "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears- (a) to have exercised a Jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (e) to have acted in the exercise of its Jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit" --- *** ---

(3) A large number of cases have been collected in Edn. 4 of Chitale & Rao's CPC (Vol. 1), which only serve to show that the High Courts have not always appreciated the limits of the jurisdiction conferred by this section. In *Mohunt Bhagwan Ramanuj Das v. Kheitter Moni Dass*, the High Court of Calcutta expressed the opinion that sub-cl. (c) of S. 115, Civil P.O., was intended to authorise the High Courts to interfere and correct gross and palpable errors of subordinate Courts, so as, to prevent grave injustice in non-appealable cases.

"THIS decision was, however, dissented from by the same High Court in *Enat Mondul v. Baloram Dev*, but was cited with approval by Lord-Williams J. in *Gulabchand Bangur v. Kabirruddin Ahmed*, In these circumstances, it is worthwhile recalling again to mind the decisions of the Privy Council on this subject and the limits stated therein for the exercise of jurisdiction conferred by this section on the High Courts. 18. As long ago as 1894, in *Rajah Amir Hassen Khan v. Sheo Baksh Singh*, the Privy Council made the following observations on s. 622 of the former Code of Civil Procedure, which was replaced by S. 115 of the Code of 1908: "The question then is, did the Judges of lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the case, and even if they

decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity." (4) In 1917 again in *Balakrishna Udayar v. Vasudeva Aiyar*, the Board observed:

"IT will be observed that the section to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of Law or fact in which the question of jurisdiction is not involved." (5) In 1949, in *Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Kadrass*, the Privy Council again examined the scope of S. 115 and observed that they could see no justification for the view that the section was intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases and that it would be difficult to formulate any standard by which the degree of error of subordinate Courts could be measured. It was said : "Section 115 applies only to cases in which no appeal lies, and, where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that "is, in breach of some provision of law, or with material irregularity, that is by committing some error of procedure in the course of the trial which is material in that it may have affected the Ultimate decision. If the High Court is satisfied on those three matters, it has no power to interfere because if differs, however profoundly ,from the conclusions of the subordinate Court on questions of fact or law. (19) Later in the same year in *Joy Chand Led Babu v. Kamalaksha Chaildhury* Lordships had again adverted to this matter and reiterated what they had said in their earlier decision. They pointed out.

"THERE have been a very large number of decisions of Indian High Courts on S. 115 many of which their Lordships have been referred. Some of such decisions prompt the observations that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under sub. s. (e), nevertheless, if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under sub-s. (a) or sub-S. (b) and sub-s. (e) can be ignored." (20) Reference may also be made to the observations of Bose J. in his order of reference in *Narayan Sonaji v. Sheshroo Vitiwba* wherein it was said that the words "illegally" and "material irregularity" do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with." (6) It is incontestable that the impugned orders do not disclose any jurisdictional infirmity. What then we have to see is whether it can be said

that the Court below has acted illegally or with material irregularity in the exercise of its jurisdiction. For this aspect, this Court has to be satisfied that some error has been committed by the Court below which relates to material defects of procedure. Errors either of law or of fact, after the formalities prescribed by law have been complied with, are immaterial. The petitioners' learned counsel has failed to point out to any material defect of procedure. Indeed, he has other cared to refer to the CPC at all for the purpose of showing any such defect. His only appeal has been that if the defendant is deprived of his right to defend, it would lead to injustice. I regret my inability to interfere on revision on the basis of this argument. Justice has to be considered from the point of view of both the litigants and in the background of the law which governs the parties and the transaction in controversy. I must confess that at one stage, in the beginning of the arguments by the petitioners' learned counsel. I felt inclined to set aside the order striking off the defense on payment of substantial costs and also on the defendant giving security for the amount decreed, but this inclination was tentative subject to what the respondent's counsel may have to say. After hearing him, I am fully convinced that there is no legal Justification for interference on revision in the case in hand. with the result that this revision fails and is dismissed, but in the peculiar circumstances of the case, I leave the parties to bear their own costs.