
(1959) 06 MP CK 0011

In the Madhya Pradesh High Court

Case No : Civil Revision No. 44 of 1957

Chowaram Bachan

APPELLANT

Vs

Thanuram Sahu and Others

RESPONDENT

Date of Decision : 26-06-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 20 Rule 3, Order 20 Rule 4(2), 2(9)

Citation : AIR 1960 MP 163 : (1959) ILR (MP) 440 : (1960) JLJ 328 : (1960) 5 MPLJ 129

Hon'ble Judges : T.P. Naik, J;S.B. Sen, J

Bench : Division Bench

Advocate : A.L. Halve, for the Appellant; Y.S. Dharmadhikari, for Non-applicants Nos. 1 to 2 and A. Razak, for Non-applicant No. 4, for the Respondent

Final Decision : Allowed

Judgement

Naik, J.

This civil revision has been referred to a Division Bench for decision at the instance of V.R. Sen. J. as it involves a point of general importance. The question that arises for consideration is whether a judgment purported to be delivered by Shri R.L. Gupta, Additional District Judge, Durg, on 14-12-1956, in civil suit No. 12-A of 1954, was legally valid in law.

The facts which have given rise to the problem may now shortly be stated. The suit was instituted on 10-9-1954 for the recovery of Rs. 16,000/-. The parties closed their case on 1-12-1956. After arguments, the Court fixed the case for judgment on 11-12-1956. On that date it was adjourned to 14-12-1956, on the ground that the judgment was not ready. The order-sheet of 14-12-1956 reads as follows:

"Plaintiff by Shri Shukla and Pande and Dass. Defendants 1 to 3 by Shri Patnkar. Defendant No. 4 by Shri Agarwal. Judgment delivered."

Shri R.L. Gupta, the presiding judge of the Court, died on 23-12-1956. On 26-12-1956, the judgment, which is on record and bears the date, 11-12-1956, was found by the Second Civil Judge, Shri M.M. Dube, in the office box of Shri R.L. Gupta. The judgment was kept in a sealed envelope and opened on 3-1-1957 in the presence of the District Judge.

This "judgment" does not bear the signature of the judge, bears a typed date, 11-12-1956, and concludes with the paragraph :

"In the result, the suit fails and it is dismissed with parties costs on the plaintiff. Counsel's fee Rs. 850/-."

On 3-1-1957, Shri M.M. Dube, Second Civil Judge, Durg, appended the following note to the judgment:

"I certify that this judgment was found in the office box of Shri R.L. Gupta, Additional District Judge (who expired on 25-12-1956) by me on 26-12-1956. I had sealed it and kept it with the Nazir. The envelope is opened today in the presence of the District Judge. The order-sheet of the suit shows that the judgment was delivered on 14-12-1956 in the presence of the counsel (Shri D.P. Agarwal, Shri C. W. Patankar and Shri Manohar Dass), who confirm this fact. The judgment was left unsigned by the judge."

The steno-typist of the judge was examined in this Court on 31-12-1957. His evidence is that a part of the judgment was dictated on 11-12-1956 and the rest on 14-12-1956. After the first part of the dictation was over, it was typed on 11-12-1956. It was up to para 8. The second part of the dictation was typed by him on 14-12-1956. That portion was not typed in continuation of paragraph 8, but was a rough draft. It was prepared at about 4.15 p.m. on 14-12-1956. It was given by him to the judge along with the judgment which was then typed up to paragraph 8. The judge gave him a corrected draft on 16-12-1956 for typing it fair.

It was so typed on the same day, he having continued the fair typing after paragraph 8, and handed over the fair judgment and the draft with the corrections to the judge who told him that he would peruse the judgment as typed by him and make corrections if necessary. He did not see the draft thereafter and the judge passed away on 25-12-1956. At the top of the judgment, he had put the date 11-12-1956 thinking that it would be delivered on that date. At the end of the judgment he should have typed 14-12-1956 instead of 11-12-1956.

He further stated that the judge (Shri Gupta) at the time of delivery of judgment in civil suit No. 12-A of 1954, informed the counsel that the judgment was being typed. He, however, announced in open Court in the presence of the counsel for the parties that the suit was dismissed.

On these facts the learned counsel for the plaintiff-applicant contends that there was no delivery of judgment in the eye of law and the unsigned judgment found

in the office box of Shri Gupta on 36-12-1956, after his death, could not be said to be valid and legal judgment disposing of civil suit No. 12-A of 1954.

The learned counsel for the non-applicants (defendants), on the other hand, contends that a judgment dismissing the suit with costs was announced orally and consequently the non-signing of the judgment by the presiding judge, Shri Gupta, which in effect dismissed the suit with costs, was a mere irregularity which did not touch the merits of the case and the judgment so pronounced could not be rendered a nullity. He also relies on an affidavit dated 19-9-1957 filed by Shri Manohardas, Pleader, Durg, who was present in the Court at the relevant time. The material portion of that affidavit reads as follows:

"That on 14-12-56 at about 4.55 p.m. the case under reference was called by the Presiding Judge, Shri R.L. Gupta. Shri D.P. Agrawal, Pleader for Chhaganlal defendant, and Shri C.W. Patankar, Advocate, for defendant Thanuram and others, appeared. The record of the case was before the Presiding Judge. While writing the order sheet he uttered that the suit was dismissed with costs. He added that judgment was being typed and parties may see it later."

The affidavit further added that, when questioned, he had informed the District Judge on 3-1-1957 that the judgment was announced orally.

The relevant provisions of the CPC bearing on the point may now be noted.

A judgment has been defined in Section 2(9) to mean the statement given by the Judge of the grounds of a decree or order. Order XX, Rule 1, says :

""The Court, after the case 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 of Order XX, says :

"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."

Rule 4 of Order XX prescribes what a judgment, other than judgments of a Court of Small Causes shall contain. It says :

"(2) Judgments. . . .shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for. such decision."

Rule 152 of the Rules and Orders (Civil), dealing with the point, says:

"Judgments shall be dated and signed by the Judge in open Court at the time of pronouncing them (Order XX, Rule 3, Civil Procedure Code). The practice of writing the judgment after deciding the case by an oral judgment is not sanctioned by the Code and must not be resorted to. Judgments must always bear the date on which they are delivered and signed in Court."

From the aforesaid provisions, the following position emerges. There shall be a judgment which shall contain a concise statement of the case the points for determination, the decision thereon and the reasons for such decision. This judgment shall be pronounced in open Court after due notice to the parties or their pleaders, and then, dated and signed in open Court at the time of pronouncing it, and once so dated and signed, it shall not afterwards be altered or added to, save as provided by Section 152 of the CPC or on review.

All the requirements are, however, not equally important or imperative, but some of these are of substance and unless these are complied with there cannot come into existence a valid and legal judgment.

Analysing the position though especially with reference to the provisions of the CPC the Supreme Court in *Surendra Singh and Others Vs. The State of Uttar Pradesh*, has laid down certain basic principles from which the following principles emerge :

(1) A judgment embodies the expression of the mind of the Court at the time of pronouncing it in open Court. A draft prepared is not a judgment, however heavily or often it may have been signed. It does not become a judgment, unless it is delivered in open Court with the intention of making it the operative decision of the Court.

(2) Once pronounced, it becomes a judgment; but until signed, the judge may freely alter or amend it or even change it completely without any further formality except notice to the parties and a rehearing on the point of change, should that be necessary.

(3) But, after it has been signed, it shall not be altered or added to save as provided by Section 152 of the CPC or on review.

(4) Small irregularities in the manner of pronouncement or the mode of delivery, the manner in which it is to be recorded or the ways in which it is to be authenticated, the signing or the sealing, all the rules designed to secure certainty about its content and matter, do not matter. These can be cured. But what cannot be cured is the "hard core", e.g., the formal intimation of the decision and its contents formally declared in a judicial way in open Court.

It would thus be seen that the declaration by a judge of his intention of what his "judgment" is going to be, or a declaration of his intention of what final result it is going to embody, is not a judgment until he has crystallised his intentions into a formal shape and pronounced it in open Court as the final expression of his mind,

In the instant case, only the first eight paragraphs of his "draft judgment" had been given a final shape on the date the Judge purported to pronounce it. The rest of the paragraphs were only in draft form and he had intended to correct them, if necessary. The final draft was prepared and handed over to the stenotypist for typing on the 16th on which date the "draft judgment", as is now

before us was finally typed and handed over to the Judge. It is thus clear that on 14-12-1956, there was no "final expression of his opinion in a crystallised form" to enable him to formally declare and intimate his "decision and its contents" in a judicial way in open Court.

The order-sheet of 14-12-1956 only records that a judgment was delivered and if, as the evidence shows, the presiding Judge gave out his mind that he was dismissing the suit with costs, he was no more than orally intimating the parties in advance what his "judgment" was going to contain. It could not be construed as a "judgment" and the substance of the provisions had not been complied with. As pointed out by the Supreme Court in *Surendra Singh and Others Vs. The State of Uttar Pradesh*, at p. 338 : (of SCR : at p. 197 of AIR) the difference is fundamental :

"In the one case, one cannot know, and it would be against public policy to enquire, whether the draft of a judgment is the final conclusion of the Judge or is only a tentative opinion subject to alteration and change. In the second case, the Judge has publicly declared his mind and cannot therefore change it without notice to the parties and without hearing them afresh when that is necessary; and if there is no change the judgment continues in force. By change we mean an alteration of the decision and not merely the addition or subtraction of part of the reasoning,"

As pointed out in the Rules and Orders (Civil), the CPC does not envisage the writing of a judgment after deciding the case by an oral judgment and it must not be resorted to, and it would be against public policy to ascertain by evidence aliunde what the "judgment" of the Court was, where the final result was announced orally but the "judgment", as defined in the CPC embodying a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision, was finalised later on.

The Judicial Committee of the Privy Council did not lay down anything to the contrary in *Firm Gokal Chand Jagan Nath v. Firm Nand Ram Das Atma Ram* AIR 1935 PC 292 , when they observed:

"The rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed, the rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was.

It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The ease of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the

Court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by Sections 99 and 108, Civil Procedure Code".

There the "judgment" was actually delivered in open Court and both the Judges, who constituted the Bench, were present and concurred in it. But, before it could be signed, one Judge went on leave and consequently, as the "hard core" of the substance underlying the, principle had been satisfied and only the provision how the decision so announced was to be authenticated remained to be done the rights of parties which had arisen from the delivery of the judgment in open Court were not allowed to be affected.

In the result, the revision is allowed. It is hereby declared that there has been no valid and legal judgment in the suit. The suit is consequently remitted to the trial Court for a re-hearing of the arguments and delivery of a proper judgment as required by law. Counsel's fee Rs. 100/-.