
(1997) 05 AHC CK 0067
In the Allahabad High Court
Case No : C.M. W.P. No. 5045 of 1980

Divisional Superintendent, Northern Railway	APPELLANT
Vs	
Second Additional District Judge and Another	RESPONDENT

Date of Decision : 28-05-1997

Acts Referred:

Payment of Wages Act, 1936 — Section 17

Citation : (1997) AWC 298 : (1998) 1 LLJ 1002

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : S.D. Mandhyan, for the Appellant;

Final Decision : Allowed

Judgement

P.K. Jain, J.—Heard counsel for the parties.

2. By the present writ petition, the petitioner prays for quashing the order dated March 22, 1980 (Annexure-3 to the writ petition) whereby the review petition was allowed by Respondent No. 1.

3. Respondent No. 2 moved an application u/s 15 of the Payment of Wages Act (hereinafter called as the Act) before the prescribed authority. The learned prescribed authority allowed the claim of Respondent No. 2 to the extent of Rs. 2108.58 as wages and Rs. 250/- as compensation. Respondent No. 2 preferred Misc. Civil Appeal No. 802 of 1977 which was heard and dismissed by the First Addl. District Judge, Allahabad vide judgment and order dated February 2, 1978 and the order of the prescribed authority was affirmed. Thereafter, Respondent No. 2 moved an application under Order XLVII, Rule 1, C.P.C. for reviewing the order so far as it related to the award of compensation. The learned 2nd Addl. District Judge, Allahabad who heard the review application allowed the same vide judgment and order dated March 22, 1980 and enhanced the amount of compensation from Rs. 250/- to Rs. 1250/-. The order passed on review application is assailed mainly on the grounds that while exercising power u/s 17

of the Act the appellate Court did not act as a Civil Court and there being no other provisions in the Payment of Wages Act conferring powers of review upon the appellate authority the impugned order was without jurisdiction and that the reviewing authority has overstepped its jurisdiction by reassessing the evidence and by forming a different opinion than the one formed by his predecessor. Learned counsel for the respondents contends that the appellate powers have been conferred upon Distt. Judge who hears the appeal in the capacity as District Judge and not as *persona designata*. Therefore, the District Judge as an Appellate Court under the CPC has power to review its decision. It is further contended that the appellate Court while disposing of the appeal vide judgment and order, dated February 2, 1978 failed to consider some evidence which was an error of application on the face of record and, therefore, the review application was rightly entertained by the Successor and was rightly allowed by the impugned judgment and order.

4. Section 17 of the Payment of Wages Act provides that the party aggrieved by the order of the prescribed authority on an application u/s 15 of the said Act may prefer an appeal to the District Judge. On a plain reading of this Section it would appear that ordinary appellate jurisdiction of the District Judge under the CPC had been extended by the provisions of Section 17 of the Act. Therefore, the Court of the District Judge to whom an appeal is preferred u/s 17 of the Act will remain ordinary Court under the Code of Civil Procedure. While hearing an appeal u/s 17 of the Act the District Judge acts as a Civil Court and exercises all the powers of the Civil Court provided in the Code of Civil Procedure.

5. There is a catena of judicial pronouncements to support the view taken by me. In *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, their Lordships while considering the appellate powers of the High Court under the Trade Marks Act approved the view taken in 1913 AC 546 and observed that the statute created the Registrar a Tribunal for safeguarding these rights and for giving effect to the rights created by the Act, and the High Court as such without more has been given appellate jurisdiction over ; the decision of this Tribunal. It is not easy to understand on what grounds it can be said that the High Court while exercising this appellate jurisdiction has to exercise it in a manner different from its other appellate jurisdiction. It seems to us that this is merely an addition of a " new subject-matter of appeal to the appellate jurisdiction already exercised by the High Court.

6. Again in AIR 1936 93 (Privy Council) their Lordships of the Privy Council held that no special jurisdiction was conferred on the High Court, and that the jurisdiction conferred on the High Court, by Section 34 was intended to include the new subject matter as part of the ordinary appellate jurisdiction of the High Court. In yet another case *Secretary of State v. Chellikani Rama Rao*, AIR 1916 PC 21, their Lordships of the Privy Council observed as follows :

"When proceedings of this character reach the District Court that Court is appealed as one of the ordinary Courts of the country, with regard to whose

procedure, orders and decrees, the ordinary rules of the C.P.C. apply".

7. Lord Atkinson in *National Telephone Co. Ltd. v. Post-Master General* 1913 AC 546 observed that it is simply the question extending the jurisdiction of an existing Court of law, with all its incidents including a right of appeal, to a new matter closely resembling in character those matters over which it has already jurisdiction as a Court of law.

8. It is, therefore, clear from these authorities that when an appeal is provided for u/s 17 of the Act, to the District Judge that Court is appealed to as one of the ordinary Courts of the country, consequently, its orders and decrees will be governed by the rules of the Civil Procedure Code. In this view of the matter it cannot be disputed that a review is competent against the decision of the District Judge passed in an appeal u/s 17 of the Act. Similar view was taken by the Division Bench ; of Madhya Bharat, High Court, reported in AIR 1955 Madhya Bharat 60 *Raj Kumar Mills Ltd. v. Inspector Payment of Wages, Madhya Bharat*. That was the case in which a revision was preferred against the appellate judgment and order passed by the District Judge u/s 17 of the Payment of Wages Act. The Court held that the appellate Court u/s 17 of the Act was ordinary District Court under the CPC and, therefore, the revision u/s 115, C.P.C. was competent.

9. Learned counsel for the petitioner has cited some cases and on the strength of these cases it is argued that the powers of review are not inherent powers and such powers cannot be exercised unless the statute provides for such powers. The cases cited by the learned counsel for the petitioner are *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*, and *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, . In both these cases the Hon"ble Supreme Court held that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. There cannot be any dispute about this legal position. However, in both these cases powers of review were exercised not by the District Judge in the capacity of District Judge but by statutory or constitutional authorities who are not governed by the provisions of Code or Civil Procedure. In the first case of *Dr. Kashinath* the power of review was exercised by Acting Speaker setting aside the earlier order of the Speaker disqualifying as member of Goa Legislative Assembly. The Hon"ble Supreme Court approved the following view taken in *P.N. Thakershi v. Pradyumansinghji* (Supra) in which following observations were made by the Court :-

"It is well settled that the powers of review is not an inherent power. It must be conferred by law either by specifically or by necessary implication."

In the other case review powers were exercised by a delegate of the State Government. The Hon"ble Supreme Court observed in para 4 that it must be remembered that Mr.Mankodi was functioning as the delegate of the State Government. The order passed by Mr.Mankodi. in law amounted to a re-View of

the order made by the Saurashtra Government.....No provision in the Act was brought to our notice from which it could be gathered that the Government had no power to review its own order. If the Government had no power to review its own order it is obvious that its delegate could not have reviewed its order. Thus on facts the case law cited by the learned counsel for the petitioner is not applicable to the facts of the present case."

10. Now the question arises if the impugned order passed on a review application was well within jurisdiction of the II Addl. District Judge or by exercising the review powers in the instant case the learned II Addl. District Judge has overstepped jurisdiction vested in him. It is well settled that a review under Order 47, Rule 1, C.P.C. can only lie if one of the grounds mentioned is made out. Order 47, Rule 1, C.P.C. permits review only when there are discovery of new and important matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is well settled that while exercising powers under Order 47, Rule 1, C.P.C. the reviewing Court does not sit in appeal on the order of his predecessor and cannot reassess the evidence. It is also well settled that the review powers cannot be exercised on the ground that the earlier decision was erroneous on merit or that a different view was possible than the one taken in the earlier decision. A reference in this regard may be made to the cases of *Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury*, 1994 AIR SCW 4680; *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* AIR 1973 SC 1047; *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, and Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, .

11. In *Smt. Meera Bhanja's* case (supra) the Supreme Court approved the following observations made in the case of *Satyanarayan Laxminaraina Hegde* (supra) at pp 141 and 142:

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ".

12. The Supreme Court held that it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

13. In *Aribam* case (supra) the Supreme Court observed as follows at p. 1048 of AIR:

"There are definite limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of the diligence was not within the knowledge of the person as seeking the view or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous grounds. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review, is not to be confused with appellate power which may enable an appellate Court to correct all manner of errors committed by the Subordinate Court."

14. In *M/s. Thungabadra Industries Ltd.* (supra) the Supreme Court made the following observations at p. 1377 of AIR:

"There is a distinction which is real, though it might not always be capable of exposition between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it a clear case of error apparent on the face of the record would be made out".

15. Examining the impugned order in the light of the aforesaid decision and in the light of the well settled legal position as stated above, it would be found that the reviewing Court has overstepped its jurisdiction. The reviewing Court in its judgment observed as follows:

"The learned Judge has observed that the maximum limit of penalty prescribed under the Act was to be granted only if the circumstances justified it. The applicant has vehemently submitted that the hardships suffered by him clearly justified the award of penalty up to the maximum limit of ten times the amount of deducted wages, and the discretion exercised by the prescribed Authority was totally arbitrary and in utter disregard of the established circumstances and unchallenged facts on the record and the learned Judge also failed to consider those facts and evidence on record in the appeal against the order of the prescribed Authority. I feel that the circumstances and unchallenged facts on record justified an increase in the amount of penalty but they were not considered which amounts to material irregularity. Considering the circumstances of hardships suffered by the applicant who had to meet his living expenses and fight several cases of deducted wages and was ultimately compelled to sell out his house and the opposite party repeated the instances of deducted wages several times. I feel that the amount of penalty was grossly inadequate and arbitrary in utter disregard of the proved hardships and problems suffered by the appellant. The interest of justice and the proved facts and circumstances warrant that the amount of penalty should be enhanced to and be substituted by the

figure of Rs. 1250/-".

16. It may be seen that the appellate Court had taken into consideration the hardships suffered by the appellant and after considering the material on record relating to the hardships the appellate Court had opined that under the circumstances the discretion exercised by the authority below cannot be said to be arbitrary. Thus it cannot be said that the appellate Court had failed to consider the circumstances and unchallenged facts justifying an increase in the amount of compensation. If on the same facts a view had already been taken by the appellate Court which may or may not be erroneous, in exercise of review jurisdiction the view taken earlier cannot be undone simply because the reviewing Court had different opinion on the merits of the case. As already pointed out earlier, the power of review cannot be exercised on the ground that the decision was erroneous on merit or that where by a long drawn process of reasoning on points where there may conceivably be two opinions. In my view, therefore, the reviewing Court overstepped its jurisdiction by modifying the order of the appellate Court by exercising review powers.

17. In view of the discussions made above the petition succeeds and is hereby allowed. The impugned order (Annexure 3 to the writ petition) passed on the review application on March 22, 1980 is hereby quashed. In the circumstances of the case the parties shall bear their own costs.