

(1980) 08 BOM CK 0020

In the Bombay High Court

Case No : Civil Application No. 1318 of 1980 in Special Civil Application No. 1884 of 1975

J.G. Sinkar and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 137, 145, 226
Criminal Procedure Code, 1973 (CrPC) — Section 369, 424
Foreign Exchange Regulation Act, 1947 — Section 23C(1), 23C(2)

Citation : AIR 1981 Bom 184 : (1981) MhLj 18

Hon'ble Judges : B.N. Deshmukh, C.J.; Sujata V. Manohar, J

Bench : Division Bench

Advocate : M.N. Heble and Parvati M. Heble, for the Appellant; A.M. Salik, Asstt. Govt. Pleader, A.N. Keswani, M.D. Angal and R.S. Khandekar, for the Respondent

Judgement

Deshmukh, C.J.—This is a petition for review of judgment made by this Bench on 7th Feb., 1980 in Special Civil Application No. 1884 of 1975. When this petition was admitted and rule was issued to the respondents, both the learned counsel now appearing before us were present. Advocate Shri Keswani represented respondents Nos. 1 and 2, who were also original respondents Nos. 1 and 2 in the writ petition. Shri Angel, Advocate, was present on behalf of respondents Nos. 3 to 10, who were the original respondents Nos. 3 to 10 in the writ petition. The learned counsel accepted the notice on behalf of the respective respondents and the hearing was fixed on 11th August, 1980. It was made clear that it will be open to the respondents to point out that the petition for review does not lie as this Court has no right of review at all. If the review petition lay, it would still be open to the respondents to argue that this is not a fit case for exercising the powers of review. Accordingly we have heard the learned counsel on either side.

2. The learned counsel for the respondents have pointed out that the High Court hearing the petitions under Article 226 of the Constitution has no right of review

at all. It was argued that the Constitution provides for a right of review of the judgments and orders passed by the Supreme Court of India. Article 137 of the Constitution lays down that subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it. By contrast, it is contended, no such provision has been made anywhere regarding the powers or right of review of the High Courts in India.

3. Several judgments have been cited before us on either side. However, the proposition does not seem to admit much of arguments in view of authoritative and categorical declaration in that behalf by the Supreme Court of India. Long before a constitutional question arose in this Court whether apart from the right of review the Courts have rights at all to rectify mistakes committed by them or to redress injustice which is caused by the Court being misled into making some judgment or some order. In other words, have the High Courts inherent powers to review their decisions, orders and judgments in the interest of justice ? It may be that the grounds on which or the circumstances under which powers will be exercised will be restricted. The question first considered by this Court was whether there is any such inherent right at all in the High Court. That question was answered in the affirmative by the Division Bench of this Court in *Basangowda Hanmantgowda Patil v. Churchigirigowda Yogangowda*, reported in ILR (1910) 34 Bom 408. The facts before the Court were that the suit was compromised on behalf of the defendant by his (defendant's) pleader who had no specific authority in that behalf. The Court passed a decree in terms of the compromise. The defendants then applied to the Court to set aside the decree on the ground that he did not engage the pleader and that he had not authorised the pleader to compromise the suit. The Court set aside the decree and set down the suit for hearing. When the plaintiffs approached the High Court by way of civil extraordinary application, the Bench held that it is the inherent power of every Court to correct its own proceedings where it has been misled. The Division Bench further held that under the circumstances the compromise was not binding upon the defendant and the decree passed upon it was void as to him. This is the pronouncement of Civil Court's inherent power of review. When the Constitution came into force it vested the High Court with special jurisdiction under Article 226 of the Constitution to issue various kinds of writs. Various questions arose with regard to writ jurisdiction of the High Court as it seems to have become most popular part of its jurisdiction. The reason is obvious. It is a remedy which is quicker and cheaper than any other remedy and capable of yielding effective result in a short time. What is the nature of the proceeding before the Court? Is it civil, criminal or something entirely different ? Whether the CPC applies to the proceeding before this Court? It appears that Section 141 of the CPC was applied in view of the stand taken that the proceedings under Article 226 of the Constitution are of civil nature. Some doubt is now being raised in view of the fact that Section 141, Civil P. C. has been amended by Act 104 of 1976 with effect from 1-2-1977. The section is retained intact but an Explanation

has been now added to it. It says that, "In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution". The effect obviously is that the procedure laid down by the CPC for a suit even with its variation according to the situation is not now available for proceedings under Article 226 of the Constitution. So long as procedure applicable to a suit was available, it was being assumed that the provisions of Order 47 relating to review will be available for High Court in relation to proceedings under Article 226. Even if the provisions of that order could not bodily be applied, the principles incorporated in it were always found handy for the purpose of entertaining review on limited ground.

4. The learned counsel for the respondents have cited some of the judgments of the Supreme Court itself. But, in our view, they are not relevant for the present purpose. Shri Keswani for the State referred to us the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, This was a case where an order passed by the Saurashtra Government was sought to be reviewed on its own behalf by the Commissioner under the Saurashtra Land Reforms Act (25 of 1951). What the Supreme Court pointed out is that it was well settled that the power to review is not an inherent power so far as the Government is concerned. It could not therefore review its own order in the absence of any specific provision in the Act under consideration. We are not concerned here with the powers of review of the Government but we are concerned with the powers of review of the High Court. Shri Angel relied upon a judgment of the Supreme Court in the case of State of Orissa Vs. Ram Chander Agarwala and Others, This judgment also does not help us because it deals with the proposition of review in relation to criminal Courts. The argument raised before the Supreme Court was whether the provisions of Section 561-A of the old Criminal Procedure Code could be exercised for correcting a judgment of the High Court. The Supreme Court points out that the Code of Criminal Procedure, 1898 contains Section 369 which underwent change from time to time. At the time when the review was made by the High Court this section provided that, "Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court, by the Letters Patent or other instrument constituting such High Court, no Court when it has signed its judgment shall alter or review the same, except to correct a clerical error." The matter reached the Supreme Court from an order of the Orissa High Court. Since there was no such provision for review anywhere either in law or in the Letters Patent or other instrument, the Supreme Court held that the controlling provisions are only those contained in Sections 369 and 424 of the Criminal Procedure Code of 1898. This section expressly takes away the right of any criminal Court either to alter or review its own judgment once it has signed it. Alteration or review is permitted only for the purpose of correcting a clerical error. The same position has been reiterated in the amended Code of Criminal Procedure, 1973 (Act II of 1974). We do not think that this judgment can be of any assistance to us in deciding whether the High Court has any right of review in relation to proceedings under

Article 226 of the Constitution. The Supreme Court judgment directly decides this question and that too in a most unmistakable language in *Shivdeo Singh v. State of Punjab* reported in AIR 1963 SC 1909. The facts of this petition showed that on a writ petition by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B, the High Court cancelled the order in favour of B though he was not a party to the writ proceedings. Subsequently B filed a petition under Article 226 for impleading him as a party to A's writ petition and rehearing the whole matter. The High Court allowed the writ petition. On those facts the Supreme Court discussed the question relating to the right of review of the High Court. What was argued before the Supreme Court was that the second order passed by the very Judge of the High Court in effect was a review of the previous order. It was then contended that Article 226 of the Constitution does not confer any such power on the High Court to review its own order and therefore the second order of Khosla, J. was without jurisdiction. In this context the Supreme Court makes the following observations in para 8 of its judgment:

"..... It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."

These are unqualified observations. Shri Angel argues before us that the facts of that case showed how patently injustice was done by passing an order without hearing the parties who were affected by that order. That may be the occasion for considering the question of right of review, but the observations are general and unqualified. If there is an inherent right of review in the Court of plenary jurisdiction, it goes without saying that the proceedings under Article 226 of the Constitution before us would attract the principles laid down by the Supreme Court in its general observations. We expressly asked the learned counsel for the respondents whether they have any further reported judgment of the Supreme Court which either qualifies or modifies or affects the authority of this judgment. None was pointed out to us. We would, therefore, take it that this is the law laid down by the Supreme Court so far as inherent right of review of this Court in respect of proceedings under Article 226 of the Constitution is concerned.

5. The next question that was addressed to us by the learned counsel for the respondents was that the right of review need not be exercised freely or with a view to provide a second hearing for the party that is dissatisfied with the Court's order. A proper remedy would normally be filing of an appeal if the procedure provides for. Undoubtedly there is constitutional provision for an appeal against every final order passed by this Court under Article 226 of the Constitution. The right must be exercised, if at all, sparingly and in cases which fall under the observations of the Supreme Court in *P. N. Eswara Iyer v. The Registrar, Supreme Court of India*, reported in . The Supreme Court observed that "a review of a judgment is a serious step and reluctant resort to it is proper

only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled argument, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient". Earlier to this judgment in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, the Supreme Court pointed out in para 8 that it was well settled that as and when a review can be claimed by a party, the normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Sajjan Singh Vs. State of Rajasthan, The Supreme Court proceeded to point out that, "For instance, if the attention of the Court is not drawn to a material statutory provision" during the original hearing, the Court will revise its judgment. For this purpose it relied upon the case of Girdhari Lal Gupta Vs. D.H. Mehta and Another, Shri Heble took us through the above judgment and the observations of the Supreme Court at p. 760. The Supreme Court was considering its previous decision under the provisions of Section 23-C (1) of the Foreign Exchange Regulation Act, 1947. It had also interpreted that section and confirmed the conviction of the accused who was the reviewing petitioner. What was argued before the Supreme Court was that the provision of Section 23-C (2) was relevant for interpreting Section 23-C (1). However, the learned counsel for the accused while arguing the main appeal did not bring that provision to the notice of the Supreme Court. Since that provision would affect the interpretation of Sub-section (1) of Section 23-C, the Supreme Court granted a review and also revised its own earlier order. What order was passed by the Supreme Court may not be of any interest to us, but the proposition that is laid down would be of interest in which it gave one illustration whether the inherent right of review can be exercised by Courts with plenary jurisdiction. We think, so far as the present case is concerned, it is this pronouncement of law by the Supreme Court and the illustration furnished by it would be enough for our purpose. Bearing in mind this limited scope of review in terms of the Supreme Court judgment in G. L. Gupta v. D. N. Mehta, we will now examine the facts and the circumstances of the present case.

6. The above discussion clearly shows that this Court has a right of review under Article 226, whether the CPC applied or not to the proceedings before it under that Article.

7 to 28. xx xx x 29. Petition allowed.