
(1951) 05 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Revision No. 207 of 1950

Kailashnath Gurtu

APPELLANT

Vs

Harishchandra and Another

RESPONDENT

Date of Decision : 28-05-1951

Acts Referred:

Companies Act, 1956 — Section 235(1)
Judiciary Act, 1903 — Section 3

Citation : (1951) 05 MP CK 0004

Hon'ble Judges : Shinde, J

Bench : Single Bench

Advocate : Bhagwandas Gupta, for the Appellant; Babulal, for the Respondent

Final Decision : Allowed

Judgement

Shinde, J.—The applicant Kailashnath filed a suit for the determination of fair rent in the court of the Civil Judge, Gwalior, under Sub-section (4) of Section 5 of the Accommodation Control Ordinance Samvat 2004. During the pendency of the suit Sthan Niyantran Vidhan Section 2006 came into force on the 9th of February, 1950. The trial Court holding that as Sthan Niyantran Vidhan has come into force it has no jurisdiction to try the suit, returned the plaint under Order VII Rule 10. The District Judge held that the order of the trial Court viewed in the light of Section 10 of the Sthan Niyantran Vidhan is correct. The Plaintiff being aggrieved by the decision of the District Judge has filed this revision.

2. The present suit for the determination of fair rent was filed on 2-5-1949. Sthan Niyantran Vidhan came into force on 9th February, 1950. So there is no doubt that at the time when the suit was instituted it was governed by the provisions of Accommodation Control Ordinance Samvat 2004. The question for consideration is whether the jurisdiction of the civil Judge to try a suit filed during the life time of the Accommodation Control Ordinance has been ousted by Sthan Niyantran Vidhan Samvat 2006.

3. It is a fundamental rule of the construction of statute that no statute except one dealing with the procedure is to be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act or raised by necessary and distinct implication. (Vide Maxwell on Interpretation of Statutes 9th Edition P. 221). Enactments dealing with procedure are always retrospective in the sense that their provisions will apply to proceedings already commenced at the time of their enactments. The reason for this is that no person has a vested right in any course of procedure; but where some of the provisions of the enactment of procedure do affect vested rights whether substantive or remedial, rule against retrospective operation of statute will apply, unless there is an indication to the contrary in the Act. This principle is now so well established that it is hardly necessary to support it by any authorities. I shall, however, content myself with quoting only one authority, which is a recent case of the Bombay High Court. In *C.P. Bannerjee Vs. B.S. Irani*, the facts were briefly as follows. Plaintiff filed a suit on 12th September, 1947 to recover a sum of Rs. 1000/-; u/s 21 of the Presidency Small Cause Courts Act, as it then stood, the Plaintiff had the election to institute the suit in the High Court. In about May 1948 the Bombay Legislature "enacted Act No. 44 of 1948 called the Presidency Small Causes Courts (Bombay Amendment) Act and by Section 2 thereof the election which was given to the Plaintiff to file a suit in the High Court was deleted. The Bombay legislature also simultaneously enacted Bombay-Act No. 41 of 1948 called the Bombay High Court Letters Patent Amendment Act. By Section 3 amendment was made in Clause 12 of the Letters Patent of the High Court. The amendment read as follows:

Except that the said High Court shall not have such" original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court.

4. The question for consideration before the Bombay High Court was whether it had further jurisdiction to try and determine the cases even though the suit was rightly received and entertained at the date when the same was instituted. In the course of the judgment Bhagwati J. made some important observations on the law relating to the subject matter of jurisdiction. As these observations have a very great bearing on this, case, I propose to quote his observations in extenso:

Normally it would not have a retrospective operation. It has been laid down as a fundamental rule of the English law, which we have been following here, that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. There is no doubt that so far as the statutes are concerned, a distinction is broadly made between procedural statutes and statutes which affect the substantive rights of the parties. There is no vested right which a subject has in regard to procedure. But with regard to the jurisdiction of the Court in which he has a right to institute proceedings a subject can have a vested right. That this is so is amply borne out by authorities and I

shall only content myself with quoting one of them, which is an authority of the Federal Court, a judgment of Varadachariar J. reported in AIR 1943 24 (Federal Court) and the passage at P. 27 Col. 1, thereof:

It will be noticed that in that case the Judiciary Act was passed during the pendency of the action in the Court of first instance and their Lordship's decision recognised that, from the date of the initiation of the action, the suitor had a right of appeal to a superior tribunal according to the state of the law, as it stood at the time of the commencement of the proceeding. This necessarily involves the recognition of an equally valuable right that the proceedings should in due course be tried and disposed of by the tribunal before which it had been commenced. This principle that a statute should not be so interpreted as to take away an action which has been well commenced has been affirmed in various cases in differing circumstances. In "Marsh v. Higgins" 1850 9 C. B. 551 it was observed by Wilde C. J. that it must have been well known to both branches of the legislature that strong and distinct words would be necessary to defeat a vested right to continue an action which has been well commenced.

These observations of the Federal Court are enough to show that where an action has been rightly instituted in a court which had jurisdiction to entertain it, would require strong and distinct words to defeat such vested right which has accrued to the litigant.

5. From the discussion above, it is clear that where an action has been rightly instituted in a Court which has jurisdiction to entertain it unless there are strong and distinct words vested right of the litigant will not be defeated. We have, therefore, to see whether the enactment Sthan Niyantran Vidhan contains any words which would go to show that the right to continue an action which has been actually rightly commenced has been taken away from the litigant. There are only two sections to which reference has been made. One is Section 23 and the other is Section 10, of the Sthan Niyantran Vidhan Sumvat 2006.

6. Section 23 runs as follows:

X X X X

7. Section 10 runs as follows:

X X X X

8. There is nothing in Section 23 to show that the right to continue an action which has been rightly commenced has been taken away. Section 10 imposes two restrictions, one is that after the Act becomes operative suit for the decision of the fair rent shall be instituted in no other court except that of the rent Controller, second is that no decree passed after this Act comes into force, can be executed if it is contrary to or inconsistent with any decision regarding rent given under this Act. These restrictions do not take away the jurisdiction of the civil Court to try a suit filed before the commencement of the Act. In both these sections, I find no strong and distinct words to defeat the vested right of the

litigant to continue his action which has been rightly commenced; nor do I find anything in these sections which would induce me to hold that the legislature impliedly intended to take away the jurisdiction of the civil Court in such matters.

9. The learned Counsel for the non-applicant referred me to (Firm) Danmal Parshotam Dass Vs. (Firm) Babu Ram-Chhote Lal, ; Benares Bank Ltd. Vs. Shri Sri Prakasha Bhagwan Das and Others, and Abdul Latif Khan Vs. Mt. Sikandar Begum is not material to this case. The question for consideration in that case was whether Section 69(2), which forbids a firm of partnership to file a suit in the court of law unless it is registered, was applicable to the case under consideration or not. The learned Judges of the Allahabad High Court held that as the operation of Section 69 was deferred for a period of one year after the rest of the Act came into force, the conclusion to be drawn is that the legislature intended to make it applicable to all cases even though the cause of action may have arisen before the Act came into force. This construction cannot be put on law governing this case. Hence this authority has no application to the present case.

Benares Bank Ltd. Vs. Shri Sri Prakasha Bhagwan Das and Others, is also not applicable to this case. In that case the question for consideration was whether the amended Section 235(1) of the Companies Act had a retrospective operation or not. The learned Judges of the Allahabad High Court held that the said section dealt with procedural law and hence it had retrospective operation.

The third authority cited by the learned Counsel for the non-applicant is Babui Dineshwari Kuer and Another Vs. Ram Narain Singh and Others, . In this case the court had been deprived of its territorial jurisdiction. The question for consideration was whether the court which had territorial jurisdiction at the time of the commencement of the proceeding was competent to ascertain mesne profits or not. The learned Judges of the Patna High Court held that when a new court is established and the territorial limit of an existing, court is curtailed, the latter court ceases to have jurisdiction over the area which is taken away from its jurisdiction and placed under the jurisdiction of the newly established "court. This view was based on the construction of Section 17 of the Bengal, Agra and Assam Civil Courts Act of 1887. This section clearly provides that where a civil Court ceases to have jurisdiction with respect to any case, any proceeding in relation to that case may be had in the Court to which the business of the former Court has been transferred. This case, therefore, has no application to the case under consideration.

10. For the reasons given above, I am of opinion that the Civil Judge, Gwalior, is competent to try the suit. I, therefore, allow the application in revision and setting aside the order of both the lower Courts remand the case for being tried according to law. Applicant to get his costs of this Court and the lower appellate Court.