

(1996) 11 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Review Application No"s. 1190 of 1994 and 21065 of 1996

Kamla Palace

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 141
Constitution of India, 1950 — Article 141, 226
Limitation Act, 1963 — Section 5

Citation : (1996) 11 AHC CK 0138

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : Prakash Dwivedi, for the Appellant; R.N. Singh and L.P. Naithani, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—This is the State"s application for review of our judgment dated 10.7.1995. The Stamp Reporter of this Court has reported that this application is beyond time by 241 days. The State has accordingly filed an application u/s 5 of the Limitation Act for condonation of delay.

2. We have heard Sri Rakesh Dwivedi, Additional Advocate General for the State applicant, Sri R. N. Singh, Sri L. P. Naithani and other learned Counsel for the opposite parties.

3. According to the affidavit filed in support of the application u/s 5 of the Limitation Act, the application for certified copy of the judgment dated 10.7.1995 was moved on 24.7.1995, which was supplied to the applicant on 20.12.1995. What is the date on which the certified copy of the judgment was ready has not been stated in the affidavit. It has, however, been stated that the review application was not moved immediately after 20.12.1995, because another Division Bench has referred the same matter to a Full Bench and the Full Bench

delivered its judgment on 22.3.1996. The review application was accordingly filed on 6.4.1996.

4. Two questions arise in this case, namely, (i) whether the State has given plausible explanation for condonation of delay in moving the application, and (ii) whether this Court could review its judgment dated 10.7.1995 merely on the ground that the law laid down by it has been overruled later on by a Full Bench in another case. Both the questions, being interlinked with each other, are being decided together.

5. It is settled that this Court can review its judgment given under Article 226 of the Constitution of India if the ground for such a review is made out. Hon'ble Supreme Court in Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, has, in this connection laid down as under:

It is true as observed by this Court in Shivdeo Singh and Others Vs. State of Punjab and Others, , 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. But, there are definitive 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 seeking the review or could not be produce 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 ground; 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 be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the subordinate court.

A Division Bench of this Court in Allahabad District Co-operative Bank Ltd. v. Lalji Srivastava 1996 (1) LBE SR 109, has after considering the decisions of the Hon'ble Supreme Court, held as follows:

The grounds on which this Court can review its judgment under Article 226 of the Constitution, are almost the same which have been set out in Rule 1 of Order XLVII of the CPC (hereinafter referred to as the Code). In fact Supreme Court in Ishvarbhai Fuljibhai Patni Vs. State of Gujarat, , has relied upon the case of A.T. Sharma v. A.P. Sharma (supra) while considering the scope of review under Order XLVII, Rule 1 of the Code.

We have been informed by the learned Counsel for the parties that the SLP filed against the aforesaid decision of the Division Bench has been rejected. Therefore, this Court can review its judgment under Article 226 of the Constitution almost on the same grounds which have been set out in Rule 1 of Order XLVII of the CPC Explanation to the Rule 1 of Order-XLVII, which is reproduced below, bars the review of a decision on the ground that the question

of law on which the decision is based has been reversed or modified by the subsequent decision of the superior Court in any other case:

Explanation.--The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

In view of the above Explanation, the review application filed by the State is not maintainable. Presuming that the said Explanation is not applicable to writ jurisdiction, the principles contained therein can and should be applied, while considering an application for review of a decision of this Court given under Article 226 of the Constitution. This Court in *Gyan Chandra Dwivedi Vs. 2nd Additional District Judge, Kanpur and Others*, , while holding that it is not permissible to review a judgment on the ground that a question of law on which it is based has been overruled by a larger Bench or a higher Court, has relied upon the said Explanation and the principle contained therein and in this connection has laid down as follows:

This Explanation was added on the recommendation of the law Commission to put an end to the controversy which had arisen as regards whether a judgment could be reviewed merely on the ground that the decision on a question of law on which the same was founded has been reversed or modified by the subsequent decision of a superior Court. Almost all the High Courts, save for the solitary exception of Kerala High Court, were unanimous in their opinion that the fact that the view of law taken in a judgment has been altered by a subsequent decision of a Supreme Court in another case should not afford a valid ground for the review of the judgment. See AIR 1944 198 (Oudh); *Lachmi Narain Balu Vs. Ghisa Bihari and Another*, ; *Patel Naranbhai v. Patel Gopaldas* AIR 1972 Guj 229; *Venkataswami Raddigar v. Thirukamu Reddiar* (1977) 2 Mad LJ 524.

It, therefore, Order XLVII, Rule 1 is applied to the present case, it is apparent that the review petition would be liable to be dismissed upon the plain terms of Explanation to Order XLVII, Rule 1. Learned Counsel for the Landlord, however, placed strong reliance on Explanation to Section 141 of the CPC Section 141 enacts that the procedure provided in the Code in regard to suits shall be followed, as far as may be in all proceedings in any Court of civil jurisdiction, Explanation to Section 141 was however, added by the Central Act 104 of 1976 and it provides:

In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.

It was urged that in view of this Explanation Order LXVII would not apply to writ petitions. I am unable to agree. Even if it is assumed that Order XLVII, Rule 1 may not in terms apply to review of judgment and orders passed in writ petitions under Article 226 of the Constitution. I see no reason why the principle underlying the same should not be invoked while considering an application for

review of a judgment of a High Court rendered under Article 226 of the Constitution. Clause (c) to Order XLVII, Rule 1 merely embodies all those principles which the Courts of law have repeatedly recognised as grounds on which a judgment may be legitimately reviewed. Incidentally, these are also the grounds which find mention in the above quoted decision of the Supreme Court in the case of Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, as the grounds on which High Court may review their judgments and orders passed under Article 226. Explanation to Order XLVII, Rule 1 merely explains and outlines the scope and ambit of the expression, in my view, "error apparent on the fact of the record." That being so, I see no good ground whatever for not applying the principle underlying the Explanation to Order XLVII, Rule 1 to writ petitions also. That Explanation, in my view, enshrines a very salutary principle which is of general application, namely, that finality attaching to judgments ought not to be disturbed except by way of appeal or on recognised grounds of review set out hereinabove and approved by their Lordships of the Supreme Court in the decision cited above.

The review application of State filed in the instant case is, therefore, misconceived and is not maintainable.

6. Sri Rakesh Dwivedi, has however, in this connection made two submissions, namely, (i) that if the Court can review the judgment on the ground of the change of law with retrospective effect there is no justification for not reviewing the judgment on the ground that the law laid down by the decision, which is sought to be reviewed has been overruled by a larger Bench or higher Court; and (ii) that the law laid down by the Full Bench is binding on all and, therefore, it is the duty of this Court to review its earlier judgment. Both the contentions are devoid of merit and cannot be accepted.

7. In Raja Shatrunji Vs. Mohammad Azmat Azim Khan and Others, . on which reliance has been placed by Sri Dwivedi, Hon"ble Supreme Court has laid down that if the law on which the decision was based has been changed by the Legislature with retrospective effect, it is open to the Court to review its judgment. The ratio of this case cannot be applied in the instant case for two reasons, namely, (i) there is difference between the change of law by the Legislature with retrospective effect and the declaration of law by the Court. When a law is changed with retrospective effect, it has to be taken that it is the law, which was there all along. The Court has to apply the law as it always was and, therefore, the decision based on a law, as it stood before the retrospective amendment, can be reviewed. Supreme Court in Shatrun Jit v. Mohd. A Azim Khan (supra) has laid down as under:

In Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatramma Rao (1900) 27 Ind App 197 . Lord Davey at page 205 of the Report said that:

the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event.

Counsel for the Appellant submitted that when the High Court decided the matter, the High Court applied the law as it stood and a subsequent change of law could not be a ground for review. The Appellant's contention is not acceptable in the present case for two principal reasons; first, it is not a subsequent law. It is the law which all along was there from 1952. The deeming provision is fully effective and operative as from 25 May, 1953 when the 1952 Act came into force. The result is that the Court is to apply the legal provision as it always stood. It would, therefore, be error on the face of the record. The error would be that the law that was applied was not the law which is applicable.

When an earlier decision is overruled by a larger Bench or a higher Court in another case, its precedent value is taken away but it remains binding on the parties to it. In this connection reference may be made to *State of Punjab Vs. Joginder Singh*, wherein the Supreme Court has laid down as follows:

In our opinion, the true position arising, if the present appeal by the State Government should succeed, would be that the finality of the orders passed in the other three writ petitions by the Punjab High Court would not be disturbed and that those three successful Petitioners would be entitled to retain the advantages which they had secured by the decision in their favour not being challenged by an appeal being filed. That, however, would not help the present Respondent who would be bound by our judgment in this appeal and besides so far as the general law is concerned as applicable to every one other than the three writ Petitioners (who would be entitled to the benefit of decisions in their favour having attained finality), the law will be as laid down by this Court.

Relying on the case of the *State of Punjab v. Joginder Singh* (supra), Supreme Court reiterated the same principle in *State of West Bengal v. Deodas Kumar JT* 1991 (2) 36. (ii) the review application is barred by Explanation to Rule 1 of Order XLVII of the CPC and even if the said provision is not applicable to the writ jurisdiction, the principles contained therein are fully applicable. Reference, in this connection, may be made to the case of *Gyan Chandra Dwivedi v. 2nd Additional District Judge, Kanpur and Ors.* (supra).

8. The appropriate answer to the second contention of Sri Dwivedi is contained in paragraph 14 of this Court's decision in *Gyan Chandra Dwivedi v. 2nd Additional District Judge, Kanpur and Ors.* (supra), which is reproduced below:

Learned counsel for the landlord also submitted that the pronouncement of the Supreme Court in *Smt. Bimla Devi's* case AIR 1984 SC 1376, is binding on this court under Article 141 and hence should be given effect to even by way of a review of this Court's judgment. No one can possibly dispute that the pronouncements of the Supreme Court have a binding effect under Article 141 of the Constitution. However, the law laid down by the Supreme Court can be given effect to only if the matter were at large before this Court in proceedings which may be legitimately pending before it. But as it happens this Court finally parted with the case with the pronouncement of its judgment rendered in 1980. That

being so, and in view of the above pronouncement of the Supreme Court which is equally binding on me as regards the scope of High Court's power of review, this Court will not be Justified in reviewing its judgment on the ground canvassed by the learned Counsel for the landlord.

The second submission also deserves rejection.

9. When this Court has already laid in *Gyan Chandra Dwivedi v. 2nd Additional District Judge, Kanpur and Ors.* (supra) that an application to review a decision is not maintainable on the ground that the law on which the decision was based, has been overruled in another case by the larger Bench or the higher Court, it was not open to the State to wait for the decision of a Full Bench before moving the application for review. If the State was really interested in review of the judgment, it should have immediately moved the application for review but it has not done so and as mentioned before the only explanation given by the State is that as the matter has been referred to larger Bench, application for review was not filed earlier. If that is so, the State has to blame itself. The State has, therefore, also failed to give plausible explanation for condonation of delay.

10. The applications are accordingly rejected.