
(1973) 09 AHC CK 0019
In the Allahabad High Court
Case No : Special Appeal No. 515 of 1966

Kanti Saran

APPELLANT

Vs

L. Babu Ram and Others

RESPONDENT

Date of Decision : 05-09-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226

Citation : AIR 1974 All 302 : (1973) 43 AWR 546

Hon'ble Judges : Satish Chandra, J;A. Banerji, J

Bench : Division Bench

Advocate : B. Dayal and Vishnu Sahai, for the Appellant; D. Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—The appellant filed an objection u/s 14 of the Arbitration Act against an arbitration award. The trial Court rejected the objection. On appeal the same was allowed and the award was set aside. The respondents filed a revision in this Court. The order of the lower appellate Court was challenged on the ground that its finding on the question of misconduct by the arbitrator was without jurisdiction. A learned single Judge dismissed the revision on 18th May, 1960, on the finding that no question of jurisdiction arose so as to attract the provisions of Section 115, Civil Procedure Code. On this view the revision was dismissed with costs. Thereafter the respondent Babu Ram filed a writ petition in this Court to challenge the validity of the same order of the lower appellate Court. A learned single Judge went into the merits of the case and found that there was manifest error of law and so quashed the appellate order of the Civil Judge.

2. It has been argued on behalf of the appellant that the writ petition was not maintainable and the learned single Judge had no jurisdiction to consider the merits of the order passed by the lower appellate Court. It was urged that by the

dismissal of the revision after hearing both parties the order of the Civil Judge merged in the order of the High Court. The High Court was thereafter incompetent to reconsider an order which had already merged in that of the High Court. In support reliance has been placed upon *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, where it was held that where a revision is decided after hearing both the parties, the order of the lower appellate Court becomes merged in the order made in revision and thereafter the appellate order cannot be challenged or attacked by another set of proceedings in the High Court under Article 226 or 227 of the Constitution. It was also held that even if the principle of merger did not apply, the writ petition ought not to be entertained by the High Court when the petitioner had already chosen the remedy u/s 115, Civil P. C. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, it would not be a proper and sound exercise of discretion to grant relief in other set of proceedings in respect of the same order of the subordinate Court. This decision is fully applicable to the present case. Here the respondent had chosen to challenge the order of the learned Civil Judge by a revision. The revision was heard and dismissed at the final hearing. The revision was dismissed with costs after hearing both the parties. By this decision the order of the learned Civil Judge merged in the order of the High Court and thereafter it was not competent for the respondent to challenge it by way of a writ petition.

3. For the respondent it was urged that the revision not having been decided on the merits, no merger took place. We are unable to agree. The ground upon which the order was challenged was that the finding with regard to the misconduct of the arbitrator was without jurisdiction. The learned single Judge also thought that no question of jurisdiction arose obviously on the view that the findings on questions of fact or law did not attract any of the three clauses of Section 115, Civil P. C. This was a decision on the merits of the revision. It cannot be said that the Court did not decide the revision on its merits. The revisional jurisdiction is circumscribed by Clauses (a), (b) and (c) of Section 115, Civil P. C., and before relief can be granted, one of those clauses must be satisfied. The finding that the case was not brought within any of those clauses is a finding on the merits of the revision. In the case of *Shanker* aforesaid it was held that the revisional jurisdiction, though circumscribed by Section 115, is none the less basically and fundamentally the appellate jurisdiction of the High Court and the principle of merger would apply to a decision given in the revisional jurisdiction. In our opinion, the writ petition was not competent.

4. It was then urged that the appellant should have raised this objection before the learned single Judge. That is true. But when it is found that the writ petition is not competent, the question becomes one of jurisdiction and it is well settled that a question of jurisdiction can be taken at any time. The mere non-raising of such an objection by the parties could not confer jurisdiction upon the Court where none existed. The question is one of existence of jurisdiction and not of its exercise. The fact that the appellant did not specifically raise this objection at the

hearing before the learned, single Judge will not render the judgment allowing the writ petition one made with jurisdiction.

5. In the result, the appeal succeeds and is allowed. The Judgment of the learned single Judge is set aside and the writ petition is dismissed with costs.