

(2023) 04 GUJ CK 0073

In the Gujarat High Court

Case No : R/First Appeal No. 307 Of 2020, Civil Application (For Stay) No. 1 Of 2019

Kiritbhai Jaykrishna Thakkar

APPELLANT

Vs

M/S Sandipkumar Bhikhabhai Patel And Co

RESPONDENT

Date of Decision : 19-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 225
Civil Rules, 1993 — Rule 1
General Clauses Act, 1897 — Section 5(3), 6, 6(c), 6(e)
Code Of Civil Procedure, 1908 — Section 98
Limitation Act, 1963 — Section 5
Gujarat Civil Court Act, 2005 — Section 14, 14A, 15(2)(a)

Citation : (2023) 04 GUJ CK 0073

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Nirav C Thakkar, Sudhir Nanavati, Nanavati

Final Decision : Dismissed

Judgement

Gita Gopi, J

1. The present First Appeal is against the judgment dated 24.09.2018 passed by the learned 3rd Additional Senior Civil Judge, Anand in Special Civil Suit No.204 of 2006. The claim for jurisdiction is Rs.13,34,500/- and claim for Appeal is Rs.5,00,000/-.

2. Placing reliance on the Notification of the High Court of Gujarat No.C.2002/93 dated 16.09.2019 learned Senior Counsel Mr. Sudhir I. Nanavati submitted that this First Appeal filed on 16.09.2019 would not receive the pecuniary jurisdiction of this Court as the Notification dated 16.09.2019 has its prospective effect from the date of this Notification and the Appeal would be required to be dealt by the Appellate authority as the Court of District Judge, since value of the subject matter of the suit is less than Rs.50,00,000/-. To be precise, it is stated that

pecuniary jurisdiction of the suit was laid down as Rs.13,34,500/- and therefore, the present Appeal would not be maintainable before this Court.

3. In support of his contention, learned Senior Counsel Mr. Sudhir Nanavati has referred to the judgment dated 17.06.2015 in First Appeal No.5/2013 and the judgment dated 29.05.2020 in First Appeal No.5/2013, with the order under reference dated 21.09.2020. It is submitted that by the Notification No.C/2002/92 the pecuniary jurisdiction has been enhanced under the Gujarat Civil Court with prospective effect from 16.09.2019. It is thus stated that on the date of filing of the Appeal, this Court had no jurisdiction to entertain the same and therefore, the respondents challenge the very maintainability of the Appeal before this Court as on 16.09.2019.

4. Learned Senior Counsel Mr. Sudhir I. Nanavati referring to the provisions of Section 5(3) of the General Clauses Act, 1897 contained in the Chapter of General Rules of Construction, stated that unless contrary is expressed a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. It is stated that the Notification dated 16.09.2019 would come into force immediately on the midnight of 15.09.2019.

5. Learned Senior Counsel Mr. S.I. Nanavati, has referred to Paragraph 10 of the judgment dated 29.05.2020 in First Appeal No.5 of 2013 where the question was related to the Notification No.C/2002/92 dated 14.10.2014. The issue was with regard to the unamended competent pecuniary appellate jurisdiction of the High Court and it was noted that on the effective date of notification, Civil Appeals were pending for consideration in the unamended pecuniary jurisdiction. On reference relating to the Notification wherein the pecuniary appellate jurisdiction of the High Court and District Court has been revised, there was a dissenting view by Hon'ble Mr. Justice V.P. Patel (as His Lordship then was) being a member of the Division Bench to the view expressed by Hon'ble Mr. Justice G.R. Udhwani (as His Lordship then was). The matter was thus placed before Hon'ble Mr. Justice Biren Vaishnav by virtue of Office Note dated 07.08.2020, in accordance with the provisions of Rule 1 of the Civil Rules, 1993 which provides that in case of difference of opinion between the judges comprising of Division Bench, the point of reference shall be decided under Section 98 of the Civil Procedure Code, thus in Paragraph 22 it was held as under :-

"22. In my opinion therefore the question of law as answered through (Coram : Hon'ble Mr. Justice G.R. Udhwani) in para 11 concurring with the oral judgment dated 17.06.2015 is the correct and the dissenting view of Hon'ble Mr. Justice V.P. Patel (as he then was) by seeking to rely on the decision of Classic Credit (supra) is not the correct view."

6. Learned Senior Counsel Mr. Sudhir I. Nanavati submitted that while concurring with the view of Hon'ble Mr. Justice G.R. Udhwani expressed in Paragraph 11, the Court has adopted the view of prospective operation with effect on the pending

appeal filed after the Notification, to be transferred to the concerned District Court and thus learned Senior Counsel Mr. Nanavati submitted that there being two concurrent views, it was urged to this Court to follow the same, and submitted that notification curtails jurisdictional power as on 16.09.2019, the Appeal before this Court would not be maintainable.

7. Learned Advocate for the appellants Mr. Nirav Thakkar submitted that the Appeal was filed alongwith the delay condonation application, as the Appeal suffered a delay of 438 days, and, the delay being condoned, the First Appeal was presented on 16.09.2019. Learned Advocate Mr. Nirav Thakkar referred to Section 5 of the Limitation Act, 1963 to contend that in cases where the appellant satisfies the Court that he had sufficient cause for not preferring an Appeal or for making an application within the limitation, then the said prescribed period gets extended.

8. Learned Advocate Mr. Nirav Thakkar stated that the right to Appeal accrues on the date of institution of the Suit and crystallizes on the date of the judgment and decree and stated that forum of Appeal is a vested right, and thus stated that any right that has accrued under Section 6 of the General Clauses Act unless a different intention appears, would not be affected by any subsequent notification and the vested right will continue inspite of the change of the jurisdiction of the different forum.

9. Learned Advocate Mr. Nirav C. Thakkar referring to Paragraph 11 of the judgment of the Division Bench in First Appeal No.5 of 2013, stated that in reference under Sections 98 of the CPC, the view expressed in Paragraph 11 has been adopted while the dissenting view was held to be not correct, and Paragraph 11 of the judgment of the Division Bench upholds the view expressed in *Khurshid Cyrus Medhora v. Cyrus Ratanshaw Medhora's* the judgment dated 17.05.2015. It is further submitted that in that judgment the Court has very categorically laid down in Paragraph 8 that it is the date of the judgment and decree, appealed against which is relevant to decide the competency of the forum to consider such Appeal, and hence, submitted that the date of the judgment, dated 24.09.2018 and the preliminary decree dated 23.10.2018 passed by the learned 3rd Additional Civil Judge, Anand in Special Civil Suit No.204 of 2006 would be relevant, to decide the Appellate Forum, where here in this case, being the Appellate Court as the referred, notification does not give retrospective effect, thus submitted that the preliminary objection which has been raised by the respondent should be rejected outright.

10. On 21.09.2020, in First Appeal No.5 of 2013, Coram : Hon'ble Mr. Justice Biren Vaishnav, held in Paragraph 22 as under :-

"22. In my opinion therefore the question of law as answered through (Coram : Hon'ble Mr. Justice G.R. Udhwani) in para 11 concurring with the oral judgment dated 17.06.2015 is the correct and the dissenting view of Hon'ble Mr. Justice V.P. Patel (as he then was) by seeking to rely on the decision of *Classic Credit*

(supra) is not the correct view.”

11. Paragraph 11 of the judgment dated 29.05.2020 is as under :-

“11. For the foregoing reasons; barring the mention of inaccurate effective date of the notification in question (effective date is 01.11.2014 but the decision mentions as 31.10.2014) this court finds the view expressed in Khurshid Cyrus (supra) as the correct view. It is held that the notification under consideration should operate prospectively and appeals instituted prior to the effective date i.e. 01.11.2014 in the unamended competent pecuniary appellate jurisdiction are maintainable in that jurisdiction and the transfer of such appeals would be contrary to the legal positions set out in this judgement. The reference is answered accordingly.”

12. In Paragraph 10 of the judgment dated 17.06.2015 in the case of Khurshid Cyrus (supra) it was held as under :-

“10. For the reasons recorded above, it is held that :-

10.1 The Appeals, which were pending before this Court at the time of issuance of the Notification by the High Court of Gujarat dated 14.10.2014, enhancing the pecuniary jurisdiction of the Courts below with effect from 01.11.2014, can not be transferred to the concerned District Court on the ground that, now it is the concerned District Court which would be competent to consider such Appeals, in view of the enhanced pecuniary jurisdiction. Those Appeals therefore need to be considered by this Court.

10.2 If the date of the judgment / decree appealed against is prior to the effective date of the said Notification i.e. upto 31.10.2014, such appeals need to be considered by the High Court only, if it was otherwise required to be filed before this Court, but for the said Notification dated 14.10.2014. In other words, it is the date of the judgment / decree appealed against, which is relevant factor to decide which is the competent Court to consider the appeal. For that purpose, it is immaterial whether on the effective date, the said appeal is pending before this Court. Still further, for that purpose, it is immaterial whether it is even filed before this Court on or before 31.10.2014. The net effect thereof is that, if the Appeal, which was not even filed on the date of issuance of the said Notification i.e. 14.10.2014 or prior to the effective date of the said Notification i.e. 01.11.2014 i.e. upto 31.10.2014, is required to be considered by this Court, if the said appeal was otherwise required to be filed before this Court but for the Notification dated 14.10.2014.”

12.1. This Court would like to refer to the observations of the Hon’ble Apex Court in the case of Neena Aneja and Another v. Jaiprakash Associates Limited reported in 2022 11 161, where the general principle of retrospective applicability has been dealt with in context of the procedural law harmonizing the right to Section 6 of the General Clauses Act and it has been concluded by the Hon’ble Apex Court in Paragraphs 82, 83 and 84 as under :-

"82. Section 6 of the General Clauses Act provides governing principles with regard to the impact of the repeal of a central statute or regulation. These governing principles are to apply, "unless a different intention appears". Clause (c) of Section 6 inter alia stipulates that a repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed". The right to pursue a validly instituted consumer complaint under the 1986 Act is a right which has accrued under the law which was repealed. Clause (e) of Section 6 stipulates that the repeal will not affect, inter alia, any "legal proceeding or remedy in respect of any such right ... as aforesaid". Any such legal proceedings may be continued as if the repealing legislation had not been passed. Clause (c) of Section 6 has the effect of preserving the right which has accrued. Clause (e) ensures that a legal proceedings which has been initiated to protect or enforce "such right" will not be affected and that it can be continued as if the repealing legislation has not been enacted. The expression "such a right" in clause (e) evidently means the right which has been adverted to in clause (c). The plain consequence of clause (c) and clause (e), when read together is twofold : first, the right which has accrued on the date of the institution of the consumer complaint under the 1986 Act (the repealing law) is preserved; and second, the enforcement of the right through the instrument of a legal proceeding or remedy will not be affected by the repeal.

83. Having stated the above position, we need to harmonise it with the principle that the right to a forum is not an accrued right, as discussed in Part C of this judgment. Simply put, while Section 6(e) of the General Clauses Act protects the pending legal proceedings for the enforcement of an accrued right from the effect of a repeal, this does not mean that the legal proceedings of particular forum are saved from the effects from the repeal. The question whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal would still persist. As discussed, this Court in *New India Assurance and Maria Cristina* has held that forum is a matter pertaining to procedural law and therefore the litigant has to pursue the legal proceedings at the forum created by the repealing Act, unless a contrary intention appears. This principle would also apply to pending proceedings as observed in *Ramesh Kumar Soni*, *Hitendra Vishnu Thakur* and *Sudhir G. Angur*. In this backdrop, what is relevant to ascertain is whether a contrary intent to the general rule of retrospectivity has been expressed under the 2019 Act to continue the proceedings at the older forum.

84. Now, in considering the expression of intent in the repealing enactment in the present case, it is apparent that there is no express language indicating that all pending cases would stand transferred to the fora created by the 2019 Act by applying its newly prescribed pecuniary limits. In deducing whether there is contrary intent, the legislative scheme and procedural history may provide a relevant insight into the intention of the legislature."

13. Section 6 of the General Clauses Act is reproduced herein below :-

"6. Effect of repeal. - Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

The Section clarifies in case of repeal of any provision under the referred Act or regulation unless different intention appears from such repeal, it would have no effect over the matters covered in its clauses viz (a) to (c). Section 6 covers a wider field and saves a wide range of proceedings referred to in its various clauses. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed.

14. In the case of Garikapati Veeraiah v. N. Subaiya Chaudhary reported in [1957] 1 SCR 488, the principles as were observed are as follows :-

"21. The larger Bench referred to number of authorities and proceeded to cull out the principles as follows :-

"23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior

court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

15. In the case of Commissioner of Income Tax v. Dhadi Sahu reported in 1994 Supp. 1 SCC 257, the Hon'ble Apex Court observed as under :-

"21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal or the court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums."

16. It has been held on 21.09.2020 that the view expressed on 17.06.2015 is the correct view wherein it was held that the Appeals pending before this Court at the time of issuance of notification by the High Court of Gujarat dated 14.10.2014 enhancing the pecuniary jurisdiction of the Court below with effect from 01.11.2014 cannot be transferred to the concerned District Court and thus, the Appeals were required to be considered by this Court. It was further held that if the date of the decree / judgment is prior to the effective date of notification, then such Appeals are to be considered by the High Court only when it was required to be filed before this Court but for the said notification dated 14.10.2014.

17. The observation was further elaborated in other words stating that it is the date of the judgment / decree appealed against which is a relevant factor to decide which is the competent Court to consider the Appeal. The date of the judgment-decree decides the competency of the forum. Thus the date of the judgment / decree against which appeal is to be filed is a relevant factor to decide the forum. Here in the Notification No.C/2002/93 of the High Court of Gujarat is dated 16.09.2019, which is in exercise of powers conferred by Article 225 of the Constitution of India and Sections 14, 14A and Section 15(2)(a) of 'The Gujarat Civil Court Act, 2005' enhancing the pecuniary jurisdictions of the Courts established under 'The Gujarat Civil Courts Act, 2005' with prospective effect, i.e. the date of notification reads as under :-

"1. Jurisdiction of a Court of Civil Judge. - The jurisdiction of a Court of Civil Judge shall extend to all original suits and proceedings of a civil nature, not otherwise excluded from the jurisdiction of a Court of Cviil Judge by any other

law, the value of the subject matter of which does not exceed Twenty Five lakhs rupees. [See Section 14 of the Gujarat Civil Courts Act, 2005]

2. Appeals.- Appeal from the decree and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the Court of the District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than Fifty lakhs of rupees. [See Section 15(2)(a) of the Gujarat Civil Courts Act, 2005]

3. Power to invest Senior Civil Judge with jurisdiction with certain Acts.- Every order made by a Senior Civil Judge by virtue of the powers conferred upon him under sub-section (1) shall be subject to an appeal to the High Court where the amount or value of the subject matter exceeds rupees Fifty lakhs or to the Court of District Judge where the amount or value of the subject matter does not exceed rupees Fifty lakhs. [See Section 24(2) of the Gujarat Civil Courts Act, 2005]”

18. The above notification dated 16.09.2019 with a prospective effect lays down that an Appeal from the decree and the orders passed by the Court of Senior Civil Judge where the value of subject matter is less than Rs.50,000/-, would lie with the Court of the District Judge.

19. Here the judgment and decree impugned are dated 24.09.2018 and 23.10.2018 respectively. The relevant date to decide the forum is the date of judgment and decree appealed against. On the date of the judgment and decree impugned, the notification was not in force. However, co-incidentally, here in the present matters, the date of presentation of the Appeal and the date of the Notification are the same. Even if the appeal is filed on the date of notification, the forum of Appeal being the vested right of the suitors, as observed in the judgments hereinabove of First Appeal No.5 of 2013 and the concurring view in First Appeal No.5 of 2013 dated 21.09.2020 with the ratio of 3:1, this Court adopting the majority view concludes that the date of competency of the forum would be decided on the date of judgment and decree appealed against, thus the present Appeal is maintainable before this Court and it becomes immaterial even if the Appeal is presented on the date of the Notification. In the result, the preliminary objection raised by the respondents is rejected.