
(2002) 10 AHC CK 0016
In the Allahabad High Court
Case No : Application No. 361 of 2002

Lallan	Vs	APPELLANT
Special Judge, Jaunpur and Others		RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
General Clauses Act, 1897 — Section 6

Citation : (2002) 5 AWC 4107

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : C.P. Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—I have heard Shri C.P. Dwivedi, learned Counsel for the applicant.

2. Request is for transfer of Civil Revision No. 342 of 1999, pending in the Court of Special Judge, Jaunpur to High Court. The request has been made in the following circumstances.

3. This revision arises out of the Suit No. 619 of 1984 and was filed in the Court of District Judge, Jaunpur, prior to 1.7.2002 and was admitted and has been transferred to the Court of Special Judge, Jaunpur and is pending for decision.

4. An amendment has been made in CPC which has been enforced w.e.f. 1.7.2002 and after considering the amendments in Civil Revision No. 92 of 2002 United Service Club and Ors. v. Anita Barlow and Ors. decided on 16.9.2002, I recorded a finding that after 1.7.2002, the revision u/s 115, CPC cannot be entertained by the District Judge. However, this revision was filed before 1.7.2002 and there is no finding in the above judgment regarding the revisions instituted prior to that date.

5. It has been contended by the learned Counsel that the learned Additional

District Judge before whom the revision is pending has expressed his opinion that in view of the above judgment, the revision cannot be decided by him. It is contended that for this reason, the Additional District Judge refused to extend the stay order and was also going to dismiss the revision but it was not dismissed on the request of the applicant that he wanted to move an application for transfer. It is further contended that one revision has been dismissed on this ground on 30.9.2002, by the District Judge, Jaunpur, the photocopy of the order has been annexed. It has, therefore, been argued that if the Additional District Judge has no jurisdiction to decide the revision, it may be recalled to the High Court and be decided.

6. The question, therefore, that arises is whether the revisions filed u/s 115, CPC prior to 1.7.2002, can be heard and decided on merits by the District Judge.

7. In this connection, firstly, it may be mentioned that there is no specific provision in the Amending Act regarding the pending revisions. However, the provisions of Clause (e) of Section 6 of General Clauses Act are material for cases where there is no expressed provision in the repealing Act. From the perusal of this provision, it is apparent that the pending revisions instituted before 1.7.2002, may be heard and decided by the District Judge.

8. This point also came up for consideration before the Apex Court in the case of Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, . The Apex Court has held that if amendment is made changing the forum regarding appeal or revision, duly instituted pending cases shall be decided by the forum in which they were instituted unless an intention to the contrary is clearly shown.

9. Similar view was also taken by the Apex Court in M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, and this Court in Central Bank of India v. Vithal Additional District and Sessions Judge, Kanpur Nagar 1997 (2) AWC 711: 1997 (1) ARC 312 and they show that duly instituted matter shall be decided by the same Court, notwithstanding the change in the forum.

10. On considering the above provision and the above decisions, there is no room for doubt that the revisions u/s 115, CPC which were instituted before the District Judges prior to 1.7.2002, can be heard and disposed of by the District Judges and the jurisdiction to decide these revisions has not been taken away.

11. The Special Judge before whom the revision is pending, therefore, has jurisdiction to decide the revision on merits. There is no question to recall of the revision to the High Court. Accordingly, the application for transfer is rejected.