
(1986) 07 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Appeal No. 356 of 1976

Lallu Ram

APPELLANT

Vs

Umraolal Sohanlal and Others

RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Constitution of India, 1950 — Article 225
General (Civil) Rules, 1952 — Rule 170
Rajasthan High Court of Judicature Rules, 1952 — Rule 160, 163, 164

Citation : AIR 1987 Raj 3 : (1986) RLW 410 : (1986) 2 WLN 63

Hon'ble Judges : V.S. Dave, J;S.C. Agrawal, J;N.M. Kasliwal, J

Bench : Full Bench

Advocate : M.I. Khan, Government Advocate and R.M. Lodha, for the Appellant;
H.C. Rastogi, for the Respondent

Judgement

Dave, J.—A short question, referred to this Full Bench by Hon"ble Kasliwal J. is ""whether the letter No. Gen/4 P.I. dated September 30, 1968 and order No. 3/ S.O. dated March 22, 1986 and circular letter No. 9/P.1. dated March 22, 1986 are in consonance with Rule 170 of the General Rules (Civil) 1952 and Rules 160, 163 and 164 of the Rajasthan High Court Rules."

2. The aforesaid question was framed by one Kasliwal, J. one of us while he was hearing Civil Second appeal No. 356 of 1976 on April 11, 1986. He decided the main appeal by a separate judgment, and raised the aforesaid question by a separate order. This Civil Second appeal had earlier been listed for hearing before Hon"ble Mehta, J. on February 25, 1986. He passed an order, whereby, he observed, "Rule 160 of the Rajasthan High Court Rules, provides that the record of the case shall be sent for when an appeal is admitted. Rule 163 provided that when an order has been made directing notice of an appeal, the office shall take immediate steps to cause notice thereof to be served on such persons as are indicated in Rule 171. The office shall, if not directed otherwise, also send a requisition to such Court asking it to transmit within ten days, all material papers of the case". Mehta J. issued a notice to the Addl. Registrar to show cause

whether the High Court Rules are strictly followed in the High Court itself or not, and if not, he should also state the reasons. The Addl. Registrar submitted his reply wherein he submitted that compliances are made according to the High Court Rules and the same are followed in day to day work. He also submitted that to avoid difficulties and obstacles standing orders are issued from time to time by the Registrar and those standing orders are also respected by the office. If some objection is raised and it is felt that any standing order is contrary to the aim and spirit of any of the High Court Rules, the same is placed before the authorities concerned for its modification or review. He stated that due to the introduction of "due course" system, an alternative arrangement was made by way of circular dated September 30, 1968, wherein a direction was given to all the District Judges that as soon as intimation of admission of appeal or revision is received, the clerk incharge of the records of that Court as well as the Courts subordinate thereto, will make a note of the same in the register and also on the record itself in red ink to the effect that an appeal/revision has been filed in the High Court and record is to be remitted on receiving intimation therefrom. It was also mentioned in the circular that instructions in this respect should also be given to the record keepers not to weed out any part of the record of such cases till the disposal of the appeal or revision even though the time limit for preserving such part of the record has expired. He also placed on record the intimation received the instant case from the District Judge, Alwar which also shows that a note was found on letter dated December 13, 1976 showing that the record is not to be remitted at present, but despite that it was destroyed. The order dated February 25, 1986, was also brought to the notice of the Hon"ble Chief Justice by the Addl. Registrar on March 4, 1986 and Hon"ble the Chief Justice directed that a circular should be issued to all the District Judges, Addl: District Judges and all Judicial Officers that record of both the lower Courts shall invariably be preserved in full until hearing of the second appeal in that case is over, in case a second appeal lies and is filed in this Court. He also directed the High Court office to inform not only first appellate Court, but also the trial Court as soon as second appeal in that case is admitted by the High Court and the first appellate Court as well as trial Court to keep the entire of the case intact until the final disposal of appeal by this Court. When the matter came up again before Hon"ble Mehta J. on March 5, 1986, he raised a question as to whether the administrative order of the Hon"ble Chief Justice or the Registrar can override the Rules made by the High Court or not. If the Rules are obsolete, it is the duty of the Court to amend the Rules and no administrative order can take place to supersede the Rules. He issued a notice to the Registrar, Rajasthan High Court, Jodhpur as to why circular dated September 30, 1968, referred to in the reply of the Addl. Registrar be not quashed as the same is not in consonance with Rule 170. Meanwhile the Registrar was directed to strictly comply with Rule 170. Thereafter, the appeal came up for hearing before one of us (Hon"ble Kasliwal J.). The main appeal was decided by a separate judgment and a separate order was passed placing the matter before Hon"ble the Chief Justice for constituting a larger bench for deciding the question mentioned above which

arose out of notice issued by Hon''ble Mehta J. on March 5, 1986.

3. Rules relevant for answering this reference are Rules 160, 163 and 164 of the Rajasthan High Court Rules, 1952 and Rule 170 of the General Rules (Civil) 1952, which are reproduced as under :--

"160, Calling of record - The record of the case shall be sent for when an appeal is admitted, or when the Court otherwise orders that the record be called for.

163. Issue of notice and requisition for record -- Where an order has been made directing notice of an appeal, revision, or reference to issue, the office shall take immediate steps to cause notice thereof to be served on such persons, as are indicated in Rule 171 and shall also give notice thereof to the Court from whose decree or order the appeal or revision has been presented or by which the reference has been made. The office shall, if not directed to otherwise, also send a requisition to such Court asking it to transmit within ten days of the receipt of such requisition all material papers of the case or, if so directed, a part thereof, unless such record has already been received.

164. When record not to be summoned at once -- Where a record is required from a Subordinate Court in an appeal or revision from an interlocutory order while proceedings in the case are pending in that Court, it shall not be sent for at once and only information of the fact that all material papers in the case would be sent for when actually required, shall be sent, and that Court shall submit the record immediately on receipt of intimation that the appeal or revision is ready for hearing.

In case such record is requisitioned at the special request of a party, it shall be sent back to the Court concerned as soon as possible and recalled only when the appeal or revision is ready for hearing.

A case shall not be listed for hearing before the expiry of two months after the receipt of the record under this and the next preceding Rule 170 of the General Rules (Civil) reads as under :--

"170. (I) Part A of Civil Records of Class I shall be preserved permanently.

(2) Part A of Civil records of class II shall be preserved for 50 years.

(3) Part A of Civil records of class III shall be preserved for 24 years.

(4) Parts B and C of Civil records of class I shall be preserved for 12 years.

(5) Parts B and C of Civil records of classes II and III shall be preserved for 6 years.

(6) Part D of Civil records of all classes shall be preserved for 3 years."

4. Thus, Rule 160 of the Rajasthan High Court Rules provides for calling of the record when the appeal is admitted while Rule 163 provides for issue of notice and requisition for record where an order has been made and requires the office

to take immediate steps to get the notice served and also for requisition for record and Rule 164 provides cases when record is not to be summoned at once. According to Rule 170 of the General Rules (Civil), procedure is laid down regarding preservation and destruction of the Civil records and different periods have been prescribed for preserving such records as provided in Clauses (1), (2) or (3) for different parts Of the record, namely, (A), (B), (C) and (D). According to this rule a mandate is given to the subordinate courts as to how it shall deal with the record of the Civil cases and this rule in no way provides for remitting the record to the High Court or for calling such record by the registry of the High Court. It is in fact, according to the provisions of the Rajasthan High Court Rules, that the office shall if not directed otherwise, also send a requisition to the subordinate court asking it to transmit within ten days all material papers of the case. This rule about requisitioning the record and calling within ten days was followed till February, 1968. Prior to that the general practice in this Court was to fix the dates of hearing in "due course" and it was found that the cases were not to be heard for number of years unless their number comes and, therefore, instead of sending for the record immediately after admission within ten days, it was possibly thought proper to send the intimation of admission to the courts against which appeal/revision has been preferred and in turn they will put a note in red ink and preserve the record till the disposal of appeal/revision. It was expected of the Court to maintain the record till final disposal of the appeal/revision even though the due period for preserving such part of the record, as laid down under Rule 170 of the General Rules (Civil) has expired. The circular letter dated September 30, 1968 is reproduced hereunder :--

No. Gen/4/P.I.

Dated 30-9-68

From

The Registrar, Rajasthan High Court, Jodhpur.

To

All District & Sessions Judges.

Sub:-- Destruction and preservation of judicial records under Rule 170 of the General Rules (Civil), 1952

Sir,

I am directed to state that after admission of an appeal or revision in this Court, intimation thereof is sent to the Court concerned and it is further informed that all material papers in the case would be sent for when actually required by the Court and should be submitted immediately on receipt of intimation that the appeal/revision is ready for hearing.

In one second appeal it was noticed that Parts B, C and D of the record of Munsif s court had been destroyed even though the intimation of admission of the

second appeal was sent to the District Judge soon after its admission and the appeal is still pending in the High Court. On inquiry it was found that the said parts had been weeded out after the time limits prescribed for preserving those parts had expired, as the record keeper did not receive intimation of the admission of the appeal in time before the destruction of the said parts due to the negligence of the Civil Clerk.

To prevent such recurrences in future, I am directed to say that as soon as intimation of admission of an appeal or revision is received by you, the clerks in charge of the record of your court as well as the subordinate court may be asked to make a note of the same in the register and also note in red ink on the record to the effect that an appeal/ revision has been filed in the High Court and the record is to be sent to the High Court on receiving intimation thereof. Further, instructions may be given to the Record keepers not to weed out any part of the record of such cases till the disposal of the appeal/ revision even though the time limit for preserving such part of the record has expired.

Sd/-

S.P. Mehra,

REGISTRAR"

5. A bare perusal of this circular shows that it is neither in conflict with any of the High Court Rules nor Rule 170 of the General Rules (Civil). It only advances the cause for which Rule 170 has been enacted. This circular, in our opinion was rightly issued and it has neither been challenged nor found to be unworkable in any manner during the last 18 years. It is in some stray case like the present appeal where as is apparent from the reply of the District Judge, Alwar, the weeding out has taken place due to inadvertent mistake of the clerk despite the fact that there was note. A human error in an isolated or stray case cannot be a ground for holding that the circular is not in consonance with Rule 170 of the General Rules (Civil). In fact the order of "Hon"ble Mehta, J. dated February 25, 1986 as well as order dated March 5, 1986, also do not indicate any ground or reason as to in what manner the administrative order of the Chief Justice dated March 4, 1986 do the circular of the Registrar dated September 30, 1968 overrides the rule or is not in consonance with Rule 170. The direction of the Hon"ble Judge to the effect that Rule 170 should be strictly complied with according to us, cannot be held to be flouted by following the circular dated September 30, 1968, and the order of the Chief Justice dated March 4, 1986. In our considered opinion these two circulars (are) not only in consonance with the rules, (but) rather advance the cause for which the High Court Rules have been framed. It is a well settled proposition of law that if any circular, standing order or office order is issued to advance the cause of the main rule and if it in no way undermines the spirit behind the enactment of the parent rule, then such standing orders, circulars or office orders cannot be quashed.

6. Mr. M. I. Khan argued that in every case there should be an order from the

court that record of the case shall be called before showing the case in the monthly cause list. It is submitted that in the absence of such order passed by the Court, the office cannot give a direction that the record be called when the case is shown in the monthly cause list for hearing. It is submitted by Mr. Khan that in the absence of any specific order being passed by the Court, the office is bound to call for, the record immediately after the admission of the case.

7. We find no force in the above contention. It is no doubt correct that if any specific direction is given by the Court relating to the record of the case, the office is bound to comply with the said order, but neither the General Rules (Civil) nor the High Court Rules lay down any provision that the record should be requisitioned immediately after the admission of the case in the absence of any direction by the Court in this regard. Before the introduction of "due course system" specific dates of hearing were fixed and on that date the cases were listed for hearing in the daily cause list and as such the record used to be called before such date. However, after introduction of new system of "due course" the cases come up for hearing in the daily cause list after a long time. The turn of each case comes according to the priority fixed on the basis of the number and year of institution in the High Court. There was paucity of space in the High Court to keep the entire record of cases which had gone in due course for hearing and whose actual date of hearing was to come after a lapse of several years. In view of this difficulty the above mentioned circulars and standing orders were issued from time to time by Hon"ble the Chief Justice. Now under the above circular and standing orders an intimation is sent to the lower courts that the appeal had been admitted and the record will be sent for when the case is shown for hearing in the monthly cause list. This sort of direction issued by Hon"ble the Chief Justice cannot be said to be in violation or in derogation of any of the provisions of Rule 170 of the General Rules (Civil) or Rules 160, 163 and 164 of the Rajasthan High Court, Rules. It may, however, be reiterated at the risk of repetition that in case any specific direction is given by the court in any particular case with regard to calling of the record, then the office is bound to comply with such direction irrespective of the circulars and standing orders issued by Hon"ble the Chief Justice. We will, therefore, answer the question as under : --

"The circular letter No. Gen/4/P-1, dated September 30, 1968 and order No. 3 S.O. dated March 4, 1986 and circular letter No. 9 P.I. dated March 22, 1986 are in consonance with Rule 170 of the General Rules (Civil), 1952 and Rules 160, 163 and 164 of the Rajasthan High Court Rules. 1952."