
(1976) 08 DEL CK 0018

In the Delhi High Court

Case No : Regular Second Appeal No. 4 of 1971

New Delhi Municipal Committee

APPELLANT

Vs

Nand Kumar Bussi etc.

RESPONDENT

Date of Decision : 25-08-1976

Acts Referred:

Citation : (1977) ILR Delhi 586

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Judgement

V.S. Deshpande, J.

(1) The question whether this Court can interfere with the decision of the Judge, Court of Small Causes, Delhi depends on the true construction of the ambit of section 25 of the Provincial Small Cause Courts Act, 1887 under which this revision has been filed by the plaintiff-petitioner. Section 25 is as follows :-

"REVISION of decrees and orders of Courts of Small Causes.- The High Court, for the purpose of satisfying itself that a decree or order made in any case "decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

(2) The suit of the plaintiff petitioner for recovery of arrears of rent at the rate of Rs. 28.00 from 8-3-1969 to 7-1-1970 amounting to Rs. 280.00 from the defendant respondent her tenant, was only partly decreed by the learned Small Cause Judge because he held that "the rent agreed to be payable by the defendant respondent to the plaintiff petitioner for a room measuring 8X6 sq. feet was only 5.00 per month as averred by the defendant respondent and not Rs. 28.00 per month as was claimed by the plaintiff petitioner. The evidence before the learned judge was (a) documentary and (b) oral.

(3) The documentary evidence was a bound printed receipt book in which the various columns had to be filled up at the time of giving a rent receipt. At the

relevant time, the plaintiff respondent had two tenants and the counterfoils of the receipts issued to them are contained in the receipt book. Exhibit P-1, while the virtual receipts had been delivered to the tenants. As many as 31 counterfoils of receipts given to the defendant respondent are contained in this bound book and each of them bears the thumb impression of the defendant respondent. The rate of rent in the counterfoils is shown to be Rs. 30.00 per month. This was later reduced to Rs. 28.00 per month. The learned Small Cause Judge held that all the thumb impressions of the defendant respondent were taken by coercion by the plaintiff petitioner and her helpers at one time on these counterfoils the recitals of which are not. Therefore, binding on the defendant respondent. The reasons for this conclusion given by the learned judge were as follows :-

(1)The defendant respondent made a complaint to the police as also to the Sub-Divisional Magistrate that her thumb impression had been taken on many receipts by coercion. this complaint was made shortly before the suit was filed by the plaintiff petitioner.

(2)A scrutiny of the counterfoils shows that the thumb impression on Exhibit P-2 is bright while the brightness diminishes as one goes to Exhibit P-3, Exhibit P-4 and Exhibit P-5. Similarly, the thumb impression on Exhibit P-6 is bright but the brightness goes on diminishing as one proceeds to the next three or four receipts and this occurs for every group of three or four receipts. -The inference is that after every three or four receipts, the defendant respondent was made to touch the ink pad and all these thumb impressions were, Therefore, taken at one time.

(3)The room was fetching only Rs, 12.37 p. as rent from the former tenant and it is not believable that the rent was suddenly increased to Rs. 30.00 per month in 1966 when the defendant respondent took the room on rent. .

(4)The defendant respondent earned only Rs. 50.00 per month and could not have agreed to pay Rs. 30.00 or Rs. 28.00 per month as rent.

(4) Only the plaintiff and her son who collected the rent for the plaintiff had personal knowledge of the rate of rent on the plaintiff's side. On the defendant's side, the defendant of course had the personal knowledge as to the rate of rent but one more witness D.W. 1 Ishwar Chand also stated that the rent was agreed to between the parties at Rs. 5.00 per month in his presence. The other witness had no personal knowledge of this matter. The task of the Learned judge was, Therefore, to scrutinise the evidence as to the rate of rent and to come to a conclusion as to whether the evidence of the plaintiff and her son was preferable to the evidence of the defendant and Ishwar Chand or not. The learned judge concluded that the defendant's version was preferable to that of the plaintiff because of the reasons given by him in rejecting the plaintiff's documentary evidence.

(5) The question before the High Court, Therefore, is whether the decision of the Small Cause Judge can be questioned" in the above circumstances. The learned

counsel for the plaintiff petitioner has urged that the decision of the trial judge is based on mere conjectures as to the nature of the documentary evidence. None of the reasons given by the trial judge for rejecting the documentary evidence could stand scrutiny. I, Therefore, scrutinised the bound book of counterfoils Exhibit P-1. It is found that the thumb impression on the first counterfoil Exhibit P-2 is fuller and brighter than the thumb impression on Exhibit P-3, Exhibit P-4 and Exhibit P-5. It cannot, however, be said that the brightness of the thumb impression diminishes in regular order as one proceeds from Exhibit P-2 to Exhibit P-5. On the other hand, it would appear that the thumb impression on Exhibit P-5 is brighter than the thumb impressions on Exhibits P-3 and P-4. The learned trial judge failed to notice this. His theory, Therefore, that the defendant respondent was made to touch the ink pad once and the four thumb impressions from Exhibit P-2 to Exhibit P-5 were taken one after the other from the ink absorbed by the thumb of the defendant respondent is not supported by the actual appearance of these thumb impressions. Similarly, the thumb impressions on Exhibits P-10, P-11, P-12 and P-13 seem to have almost the same degree of brightness a fact which goes against the theory propounded by the learned trial judge. It is also difficult to distinguish between the relative brightness of Exhibits P-15, P-16 and P-17. Nor can it be said that any such difference can be noticed in the relative brightness of many other Exhibits such as Exhibits P-22, P-23, P-24, P-25, P-26, P-27 and P-28.

(6) The fundamental and obvious facts regarding the book of counterfoils which the learned trial judge entirely forgot to notice were the following, namely :-

(1) The book is a bound one.

(2) That Exhibit P-2 to Exhibit P-9 were not consecutive but were alternate counterfoils. Counterfoils of another tenant K. C. Gupta existed in the bound book between each two of these exhibits.

(3) Each counterfoil of the defendant as also of K. C. Gupta was numbered and dated. These numbers and dates smoothly flow in a Serial order. Each number is followed by a subsequent Serial number and the dates also conform with the sequence of the numbers. That is to say, the lower the number the earlier the date.

(7) The question which the trial judge should have tackled is this. It is in evidence that K. C. Gupta was the other tenant of the plaintiff during this time, namely, October 1966 to April 1967. If so, the plaintiff's case is greatly strengthened by the fact that both the tenants were issued similar receipts and the counterfoils of these receipts are contained in Serial order according to numbers and date. There is nothing to suggest that the counterfoils signed by K. C. Gupta were not signed on the dates of these counterfoils and that the Serial numbers thereof were not correct. If the defendant's story that her thumb impressions from Exhibit P-2 to Exhibit P-31 were all taken at one time were true, then either of the two things must have been done. If K. C. Gupta had not

signed the counterfoils of receipts given to him before the date on which the defendant's thumb impression is said to have been taken by coercion, then the book of the counterfoils from Exhibit P-2 onwards must have been blank. It would pass comprehension as to how it could occur to the plaintiff at that time that the thumb impressions of the defendant from Exhibits P-2 to P-9 should be taken on alternative pages leaving one page blank between each of these Exhibits. It is also simply unbelievable that K. C. Gupta would have obliged the plaintiff subsequently in filling these alternative blank pages and signing them while they bore different consecutive numbers and the dates. Alternatively, if K. C. Gupta had already signed the counter foils in respect of those receipts on the date on which the complaint was made to the police and the Magistrate by the defendant, then it should have been inquired into by the trial judge whether K. C. Gupta was made to sign counterfoils on alternate pages while the pages in between two counterfoils of K. C. Gupta were left blank till all those blank pages were filled by the thumb impression, of the defendant subsequently taken. How could it have occurred to the plaintiff that for more than a year she should go on taking K. C. Gupta's signature on alternate pages with the hope that thereafter she would be able to secure the thumb impressions of the defendant by coercion on the blank pages ? These considerations never occurred to the learned trial judge. Had he cared to view the documentary evidence in the light of the bound nature of the book and the consecutive numbers and the dates of the exhibits, he could not have reached the conclusion that the thumb impressions of the defendant were all taken on one day. For, no reasonable person can believe that on the date on which the defendant's thumb impressions were alleged to have been taken by coercion either Exhibits P-2 to P-9 had been left blank or the corresponding counterfoils signed by K. C. Gupta had been left blank. On the other hand, it seems to be quite clear that the counterfoils were signed by K. C. Gupta and by the defendant precisely in accordance with the numbers and the dates which they bore. The consecutive positions of the Exhibits P-2 to P-9 and the counterfoils of K. C. Gupta wedged between each two of them cannot be changed because all of them are pages of a bound book. The only Explanation why the counterfoils Exhibit P-2 to P-9 alternates with the pages of counterfoils of K. C. Gupta is that each month the rents were paid by both the defendant and K. C. Gupta one after the other and the receipts were accordingly given by the plaintiff to these two persons in the order in which the rents were paid and this is the only reason why the counterfoils of these receipts alternate with each other. The nature of the counterfoil book cannot thus be explained by the theory of the learned trial judge that all the Exhibits P-2 to P-31 were thumb-marked by the defendant on one day. The finding of the learned judge as to the nature of the counterfoils is, Therefore, perverse and is such as no reasonable person could have arrived, at in a judicial manner.

(8) As to the making of complaints to the police and the Magistrate, they could be made falsely with a view to counter an impending suit for recovery of arrears of rent at the rate of Rs. 30. As to the raising of the rent from Rs. 12.37 p. to Rs.

30 in 1966, such a thing is not inherently unbelievable. Rents in Delhi have been on the rise for the last some years and the landlords are taking advantage of the departure of the previous tenants and the plaintiff could have taken advantage to raise the rent to more than double the rent of this room. Defendant's income alone is not relevant to the rate of rent. Her daughters and sons-in-law may also be using this premises and contributing towards payment of rent. The occupation of the room is accompanied by common rights over other premises and exclusive use of the top roof. The premises are situated in the heart of Delhi. Unless, Therefore, the defendant could demolish the strong documentary evidence produced by the plaintiff not much can be made out of the rate of the rent.

(9) Witnesses can lie but documents cannot. As the evidence of the counterfoils stands firmly" in favor of the plaintiff's case, it is the oral evidence of the plaintiff and her son as against that of the defendant and Ishwar Chand which had to be believed as being in conformity with the documentary evidence.

(10) The question as to the scope of section 25 of the Provincial Small Cause Courts Act, 1887. has to be considered in the light of the circumstances of this case summarised above. Three factors have vitiated the judgment of the trial Court. Its conclusion as to the counterfoils was such as could not be arrived at judicially by a reasonable person. The appreciation of the oral evidence was bound to be such as to conform to the finding as to the "documentary evidence. The perverse finding as to the counterfoils made the judge to prefer the defendant's evidence to the plaintiff's evidence. The result was that the decision as a whole became perverse and resulted in a grave miscarriage of justice. Incidentally the learned trial judge, without saying so, virtually placed the burden to prove the genuineness of the counterfoils on the plaintiff though the burden was on the defendant to show that the counterfoils were executed by her under coercion because the execution of the counterfoils by the defendant had been proved.

(11) The question is whether all or any of the above defects in the trial courts decision enable this Court to interfere with that decision within the ambit of section 25. Let us, Therefore, try to understand the meaning of section 25. The following propositions may be offered to explain its meaning :-

(1)Section 25 gives the remedy of a revision as contrasted with that of an appeal. As pointed out by the Supreme Court in Hari Shankar v. Rao Girdhari Lal Chowdhury, Air 1963 S.C. 698, paragraph (7), unlike an appeal revision does not carry with it a right of re-hearing. This Court cannot, Therefore, treat this revision as a complete rehearing of the findings of the trial judge. The first proviso to Section 75(1) of the Provincial Insolvency Act, 1920 is in the same terms as section 25. It was held by the Supreme Court in Official Receiver, Kanpur and Another Vs. Abdul Shakur and Others, . that the High Court could not question the findings of fact reached by the trial court even if in reaching the said finding the trial court was required to take into consideration a statutory presumption.

(2) But the scope of all revisions is not necessarily the same. It is the language of the statute giving the remedy which would determine the scope of the particular revision. It was recognised by the Supreme Court in *Hari Shankar*, referred to above, that the scope of the statutory revisions u/s 25 of the Provincial Small Cause Courts Act as also under other statutes similarly worded is wider than the scope of the revision u/s 115 CPC which is restricted to jurisdictional defects. The Court observed in paragraph (8) that "the phrase "according to law" refers to the decision as a whole, and is not to be equated to error of law or of fact simpliciter." In *Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others*, , the decision in *Hari Shankar* was reaffirmed. The ambit of the power of the High Court under the first Proviso to section 75(1) of the Provincial Insolvency Act, 1920 was equated with the ambit of section 25 of the Provincial Small Cause Courts Act, 1887. In both these provisions the power of the High Court to examine the trial court's decision with a view to find out whether it was "according to law" was held to be wider than the power of the High Court in second appeal u/s 100(1)(a) of the CPC which restricted interference to the trial court decision being "contrary to law". If the inquiry is whether the trial court's decision is "contrary to law" then one has to find out whether the trial court made any specific error of law or whether any part of its decision was directly contrary to some law. On the other hand, if the inquiry is whether the decision of the trial court is "according to law" then it may not be necessary that any specific part of the trial court's decision is contrary to a specific provision of any particular law. The decision as a whole would not be according to law if, for instance, it is based on no evidence. As explained in *Delhi Transport Corporation v. Delhi Administration*, ILR (1973) Del 838 , the meaning that a decision is based on no evidence is not that literally there is no evidence to support it. The meaning of "no evidence" is the absence of such evidence as would be believable by a reasonable person. If the trial court, Therefore, purports to believe some evidence which on the face of it is unbelievable, then the decision of the trial court would be perverse and would not be "according to law" though in believing unbelievable evidence, the trial court did not violate a specific provision of any particular law. This is why *Beaumont, C. J. in Bell and Co. Ltd. Vs. Waman Hemraj*, , laid down that "the object of section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law." A perverse decision results in miscarriage of justice. Hence it is not a decision given according to law. *Bose, J. in AIR 1943 7 (Nagpur)* , queried as to what would be the meaning of "justice" in this context. Justice may be social, moral or legal. *Niyogi, J.* answered the query by holding that justice according to law may be taken to mean "legal or formal or conventional justice." This means justice between the parties according to the record of the case. If, Therefore, the decision of the trial court is contrary to the overwhelming weight of the record, it would be a decision which no reasonable person could arrive at being, a miscarriage of justice and would not be according to law. In *Hari Shankar*, the Supreme Court fully approved of the observations of

the Beaumont, C. J. in Bell & Co. Ltd. v. Waman Hamraj as to the ambit of section 25. The decision in Hart Shankar was also reaffirmed by the Supreme Court in yet another case, namely, Pooran Chand v. Motilal, (1963) Suppl. 2 Scr 906.

(3)The perversity of the decision of the trial court in the present case, the error of law committed by it in placing the burden of proof on wrong shoulders and the consequent miscarriage of justice rendered the trial court decision as a whole as being not "according to law" within the meaning of section 25 of the Provincial Small Cause Courts Act, 1887.

(12) The trial court's decision is, Therefore, set aside and the suit of the plaintiff is decreed with costs. The costs of this revision shall also be borne by the defendant respondent.