
(1989) 08 AHC CK 0028
In the Allahabad High Court
Case No : F.A.F.O. No. 636 of 1989

Oriental Insurance Co. Ltd., Haldwani	APPELLANT
Vs	
Dhanram Singh and others	RESPONDENT

Date of Decision : 04-08-1989

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1939 — Section 110
Motor Vehicles Act, 1988 — Section 173, 217(2)
Transfer of Property Act, 1882 — Section 56

Citation : (1990) ACJ 41 : AIR 1990 All 30 : (1993) 76 CompCas 624

Hon'ble Judges : N.N. Mithal, J;G.D. Dube, J

Bench : Division Bench

Advocate : Vineet Saran, for the Appellant;

Final Decision : Disposed Of

Judgement

N.N. Mithal, J.—A preliminary question as to the maintainability of the appeal has come up for consideration in the present appeal.

2. On an award being made by the Motor Accidents Claims Tribunal under S. 110-B of the Motor Vehicles Act, 1939 (hereafter "old Act") on a date prior to 1-7-1989 an appeal purporting to be one under S. 110-D of the said Act was filed after 1-7-1989. It may be stated that the Motor Vehicles Act, 1988 (hereinafter referred to as the "New Act") was enforced w.e.f. 1-7-1989 and under S. 217 of the new Act the 1939 Act was specifically repealed in the new Act an appeal is provided against the award of the Claims Tribunal under S. 173 but it is hedged in with a condition that such an appeal will not be entertained by the High Court by a person who is required to pay any amount under the award unless he deposits twenty five thousand rupees or fifty percent of the amount awarded, whichever is less.

3. Sri A. B. Saran, learned Counsel for the appellant, submitted that despite repeal of the old Act the right of appellant to file an appeal under S. 110-D of the

old Act survived and the appellant cannot be compelled to take recourse to S. 173 of the new Act and be subjected to such onerous conditions as are now imposed under the new provisions. His submission was that by repeal of the old Act and its substitution by a new one on the same subject the substantive right of a party cannot be adversely affected and an appeal as provided by the old Act can still be lodged.

4. The effect of repeal on the pending proceedings or the rights already accruing under the old Act has been subjected of judicial interpretation in numerous decisions. The consistent view has been that the repeal or amendment of an Act does not affect a right already in existence unless a contrary intention is made out expressly or by implication. Ordinarily the effect of the repeal of an enactment is to obliterate it completely from the records as if it had never been passed and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law. The High Court of Madras while dealing with a case under S. 56 of the Transfer of Property Act, in Subbarama Reddiar v. Raghava Reddi, AIR 1955 Mad 439, held as under:

"Under S. 56 of the Transfer of Property Act, 1882, before the amendment of 1929, the mortgagee had a right, which accrued to him on the date of the mortgage itself, or realising, if he chose, the entire amount due to him from any part of the mortgaged property. Such a right was not subject to any right of marshalling at the instance of the purchaser, of a portion of the hypotheca. This right was not a mere privilege. Even assuming that all that the mortgagee had was privilege even then under S. 6 of the General Clauses Act, that privilege itself would not be taken away except by expressed enactment or necessary intendment by the amending Act. Therefore, notwithstanding the amending Act which came into force by the time of the institution of the suit, rights of the parties are governed by the original S. 56 under which the purchaser of any portion of the hypothecated property did not have the right of marshalling as against the mortgagee."

5. That was, however, not a case of repeal of an Act but merely of amendment of certain provisions therein. Thus where there is a repeal of an enactment, the consequences laid down in S. 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of contrary opinion. But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liability, but whether it manifests an intention to destroy them. The Court in such cases cannot subscribe to the broad proposition of S. 6 of the General Clauses Act which has no application when there is a repeal of an enactment followed by a fresh legislation.

6. We must, however, hasten to add that this is true only of the substantial right of parties. A substantial right is not assumed to be taken away by a new Act unless it expressly says so. But a right to sue in one Court rather than another or a right to wait for a particular period of time before suing is not a substantive right. The selection of forum and the period of limitation are ordinarily matters of procedure only. The selection of a Court in no way affects the right of suit itself and the Limitation Act does not necessarily extinguish the right although it may place a bar against the remedy by suit.

7. Under S. 217 of the new Act while repealing the old Act certain savings have been made relating to some investigation etc. as enumerated in sub-section (2) thereof. These provisions do not specifically include the saving in respect of pending claim petitions. This seems to have been covered by providing in sub-clause (4) that mention of particular matter in this section shall not be held to prejudice or affect the general application of S. 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals. In other words apart from savings made in various sub-clauses of S. 217(2), S. 6 of the General Clauses Act also has been made applicable. Section 6 of the General Clauses Act to the extent relevant for our purpose is as under:--

"Where this Act or any Central Act or Regulations made after re-enforcement of this Act repeals any enactment hitherto made or hereafter be made, then, unless a different intention appears,

The repeal shall not --(a) & (b).....

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

(d).....

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and no such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

8. It will thus be seen that although no specific saving clause exists in S. 217 of the Act yet the pending proceedings have been saved by S. 6(e) of the General Clauses Act which can continue as if the repealing Act had not been passed. The real problem is in respect of matters decided before the enforcement of the new Act but the right to file appeal at that had not been exercised.

9. In a comparatively recent decision which came up for consideration by the supreme Court in the case of Jose Da Costa and Another Vs. Bascora Sadasiva Sinai Narcornim and Others, this is what the highest Court of the land had to say on this subject:

While provisions of statute dealing merely with matters of procedure may

properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of statute are not to be applied retrospectively, in the absence of express enactment or necessary intendment. The right of appeal being a substantive right, the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are, however, two exceptions to this rule viz. (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the Court to which appeal lay at the commencement of the suit stands abolished;

The Court further observed that (at page 1850):-

"The provisions of the Portuguese Civil Code relating to "Reclamacao" lay down only a procedure, which has to be gone through before a litigant is entitled to raise in appeal a material point left by the lower Court. The requirement or obligation to file a "reclamacao" is not an obligation in case or/and from the institution of the suit. Nor is the procedural right to file "reclamacao" is dependent upon the happening of an uncertain event. It arises only when a judgment suffering from a nullity is passed. Such a contingency may or may not arise. On the other hand in the case of a suit it can be predicated that it would normally result in a decree entitling the aggrieved party to have the suit re-heard and re-decided in a higher forum by filing an appeal provided that such a right is available under the law prevailing at the institution of the suit."

10. The above case makes a clear distinction between the rights which are substantive in nature and those which are merely procedural or contingent. A right of appeal is regarded as a substantive right and unless the repealing Act specifically takes away this right a party will be entitled to avail the remedy of appeal under the repealed Act. This position would be made amply clear from the facts of another decision of the Supreme Court in Maria Cristina De Souza Sodder and Others Vs. Amria Zurana Pereira Pinto and Others, . In that case a suit was filed for amendment of a partition decree which had already taken place earlier on the ground of improper valuation. Under the provisions of Portuguese Law applicable to Goa during the pendency of the suit several important changes took place viz.:--

"(a) the territories of Goa, Daman and Diu were liberated and became a part of the Union of India with effect from Dec. 20, 1961;

(b) the Limitation Act, 1963 that was enacted by the Parliament and which came into force on January 1, 1964, became applicable to the whole of India including the Union Territory of Goa, Daman and Diu;

(c) the Parliament also enacted the Goa, Daman and Diu (Extension of the Code of Civil Procedure, 1908 and Arbitration Act, 1940) Act, 1965 (Act XXX of 1965) whereunder the provisions of the Indian Code of Civil Procedure, 1908 were

extended to the territories of Goa, Daman and Diu with effect from June 15, 1966 with the corresponding provisions of the Portuguese Code being repealed; and

(d) the Legislative Assembly of Goa, Daman and Diu enacted the Goa, Daman and Diu Civil Courts Act, 1965 (Act XVI of 1965) which came into force on June 15, 1966."

11. In view of change in law the suit was transferred to the corresponding Court of Civil Judge under the new Act and an appeal from its decision lay to the High Court (Judicial Commissioner's Court in the case of Union Territories). Relying upon the extension of Indian CPC with protanto repeal of the Portuguese Courts read with Goa, Daman, Diu Civil Courts Act, 1965 the appeal was lodged in the Court of Judicial Commissioner within the time prescribed under the Indian Limitation Act. On an objection being taken as to the forum of appeal as well as limitation the Supreme Court rejected the plea that the forum of appeal will be the same as provided under the old Portuguese Code. In this regard the Court observed as under (at p. 1355).

"a remedy or legal proceeding in respect of a vested right like a right to an appeal may be instituted, continued or enforced as if the repealing Act had not been passed: But this provision merely saves the remedy or legal proceedings in respect of such vested right which it is open to the litigant to adopt notwithstanding the repeal. This provision has nothing to do with the forum where the remedy or legal proceeding has to be pursued. If the repealing Act provides new forum where the remedy or the legal proceedings in respect of such vested right can be pursued after the repeal, the forum must be provided in the repealing Act."

At another place the Court also observed:

"It is no doubt well-settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the list is commenced in the Court of the first instance and such right or any remedy in respect thereof will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary implication takes away such right or remedy in respect thereof."

12. In a very recent decision by the Supreme Court in *Bansidhar and Others Vs. State of Rajasthan and Others*, the Court held that (at p. 1618):

"It must now be taken to be settled that the mere absence of an express reference to S. 6 of the General Clauses Act is not conclusive unless such omission to invoke S. 6 of the General Clauses Act is attended with the circumstances that the provisions of the new law evince and make manifest an intention contrary to what would otherwise follow by the operation of S. 6 of the General Clauses Act, the incident and consequences of S. 6 would follow."

13. Quoting from *Salmonds Jurisprudence* it was held that the question of forum

where the appeal would lie and the limitation within which it is to be lodged are all matters of procedure and not of substance. What is preserved is the substantive right of appeal not where and within what time the appeal must be filed. The question of limitation was not finally decided as the appellant had moved an application for condoning the delay and in view of the complex nature of the question which was not free from doubt the Court condoned the delay while allowing the appeal.

14. From the above decision two things are clear i.e. only substantive rights possessed by a party is of a right to appeal and secondly the forum where the appeal will lie and the limitation to do so are all matters of procedure which are not saved by the repealing Act.

15. A look at S. 217 of the new Act in the light of the decision referred to earlier it will be noticed that here is no specific provision to save the right of the appellant under the old Act but in view of S. 6 of the General Clauses Act which has been made applicable it would be proper to assume that in cases decided before the repealing Act came into force the right of appeal will survive and can be enforced by lodging an appeal but this right of filing of appeal must be availed only in the manner provided for under the repealing Act i.e. as required by S. 173 of the new Act.

16. Learned Counsel for the appellant, however, submitted that if an appeal arising out of the award delivered under the old Act is now-filed under the provisions of S. 173 of the new Act the appellant will be burdened with deposit of rupees twenty five thousand or fifty per cent of the amount awarded and this will be a very onerous condition to which the appellant will be subjected to. The learned Counsel has also cited some cases which go to show that if any onerous conditions, are imposed by the repealing Act the new provision to that extent will not be applicable to the appeal arising under the old Act. We are, however, of the opinion that the conditions which have been imposed under S. 173 is a pre-requisite for filing an appeal are in fact not onerous in nature. When a judgment has been obtained against the appellant for payment of money the appellant cannot as of right claim exemption from its payment. The Motor Vehicles Act and particularly the part dealing with the award of compensation in respect of Motor Accidents is a social legislation for the benefit of victim of an accident. If the law enjoins deposit of money it is only to protect the interest of the claimant who are in any case the worst sufferers. In order to give succour to them by making at least a part of compensation awarded available to them, it cannot be said that this condition would be an onerous imposition of liability. We find ourselves unimpressed by the logic and basis of this argument.

17. In view of what we have said above and after having considered various aspects of the matter placed before us we are of the opinion that a right of appeal accruing under the old Act being a substantive right is saved even after repeal by the new Act but the appeal which is lodged after 1-7-1969 must be under S. 173 of the new Act and must comply the conditions such as are laid

down in that Section.

18. We, therefore, decline to entertain the appeal without the appellant's first complying with the provision of S. 173 of Act 59 of 1988.

19. Order accordingly.