

(2016) 06 SHI CK 0065
In the High Court Of Himachal Pradesh
Case No : CWP No. 3160 of 2015

Pawan Sharma

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) ILRHP 1778

Hon'ble Judges : Mr. Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. Ajay Sharma, Advocate, for the Petitioner; Ms. Meenakshi Sharma, Additional Advocate General, with Mr. J.S. Guleria, Assistant Advocate General, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Tarlok Singh Chauhan, J.(Oral)—This writ petition has been filed with the following substantive prayer:

"(i) That an appropriate writ, order or directions may kindly be issued and the impugned order dated 3.9.2014, Annexure P-5, passed by respondent No. 2 may kindly be quashed and set-aside thereby issuing command to respondent No. 2 to grant approval as is sought by respondent No. 3 vide his orders dated 31.7.2014 with further directions to respondent No. 3 to decide the question of review as is sought by the petitioner vide petition pending before him within time as deemed by this Hon"ble Court, in the interest of law and justice."

2. The undisputed facts are that the petitioner filed an application for correction of "Meterkhan" of the land as per details given in the application. The respondent No. 3 vide order dated 11.2.2013 ordered the said correction. However, there were certain errors in the said order, constraining the petitioner to file a review petition before respondent No. 3.

3. The application was processed and the respondent No. 3 was convinced that

there was error on his part, but since he was not competent to carry out the corrections and was required to seek permission from respondent No. 2 before carrying out the correction, he accordingly sought the requisite permission, which admittedly has been declined by respondent No. 2 on the ground that the case could not be re-opened/reviewed after lapse of a period of almost 1 year and 6 months.

4. The respondents have though filed their reply, but as observed earlier, the factual position has not been disputed. I have heard learned counsel for the parties and have gone through the records of the case carefully.

5. The zimini orders annexed as Annexure P-4 with the writ petition reveal that the review was sought by respondent No. 3 from respondent No. 2 on the ground that the mistake in fact had been committed in his office as is evident from N-4 which reads thus:

".....Discussed on 31.7.2014. Review orders be sought from Worthy Divisional Commissioner in this matter, since the mistake has been made on the part of our office."

6. The respondent No. 3 had unequivocally admitted and acknowledged the mistake to be on the part of its office, therefore, the fact that the application was moved after a period of one year and six months, was really of no consequence.

7. The proposition that Rules of Procedure are handmaid of justice and cannot take away the residuary power in Judges to act *ex debito justitiae*, where otherwise it would be wholly inequitable, is by now well founded.

8. It must be remembered that the Courts are respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so and further taking into consideration the fact that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done.

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. Processual law is not to be a tyrant but a servant, not an obstruction but an

aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

12. It is useful to quote the oft-quoted passage of Lord Penzance in 1879 (4) AC 504:

"Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve."

13. In the matter of Sangram Singh v. Election Tribunal, Kotah reported in AIR 1955, S.C. 425, the Hon^{ble} Apex Court has observed as under :

"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provide always that justice is done to both sides) less the very means designed for the furtherance of justice be used to frustrate it."

"Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course there must be expectations and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso our laws of procedure should be construed, wherever that is reasonably possible in the light of that principle."

14. In Balwant Singh Bhagwan Singh and another v. Firm Raj Singh Baldev Kishen reported in AIR 1969 Punjab and Haryana 197 it was held that:

"Promptitude and despatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner, which would hamper justice. As a general rule, evidence should never be shut out. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process fee arises from negligence or carelessness."

15. In the matter of State of Gujarat v. Ramprakash P. Puri, reported in 1970 (2) SCR 875, the Hon^{ble} Apex Court has held that:

"Procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which

would promote this cause."

16. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. - Justice is the goal of jurisprudence - processual, as much as substantive. (See *Sushil Kumar Sen v. State of Bihar* (1975) 1 SCC 774).

17. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See *Shreenath and Another v. Rajesh and others* AIR 1998 SC 1827).

18. The Hon"ble Supreme Court in (2007) 9 Scale 202 (*R.N. Jadi & Brothers v. Subhash Chandra*), considered the procedural law vis-`-vis substantive law and observed as under:

"9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

19. Procedure is only handmaid of Justice:- All the rules of procedure are the handmaids of justice. Any interpretation which eludes substantive justice is not to be followed. Observing that procedure law is not to be a tyrant, but a servant, in *Sambhaji and others v. Gangabai and others* (2008) 17 SCC 117, the Hon"ble Supreme Court held as under:

"6.(14) Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

20. In 2011 (1) Scale 469 *Rajendra Prasad Gupta v. Prakash Chandra Mishra and others*, the issue before the Hon"ble Supreme Court was as to whether an application will be maintainable before the trial Court to withdraw the application filed earlier for withdrawal of the suit. The trial Court dismissed the application as not maintainable. The High Court held that once the application for withdrawal of the suit is filed the suit stands dismissed as withdrawn even without there being any order on the withdrawal application and as such another application at a later point of time to withdraw the suit was not maintainable. When the matter was taken up in appeal, the Hon"ble Supreme Court disagreed with the views

expressed by the High Court. While allowing the appeal, the Hon"ble Supreme Court observed thus:

"5. Rules of procedure are handmaids of justice. Section 151 of the Civil Procedure Code gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted."

21. The Hon"ble Supreme Court in 2011 (6) Scale 1 Mahadev Govind Gharge and others v. The Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka, reiterated the legal position regarding procedural law and observed:

"28. Thus, it is an undisputed principle of law that the procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold...."

22. Bearing in mind the aforesaid exposition of law, the respondent No. 2 was required to adopt a liberal, pragmatic justice oriented and non-pedantic approach in the matter, more particularly, when respondent No. 3 himself had acknowledged the mistake committed on the part of its office.

23. In view of the discussion, the impugned order dated 3.9.2014 (Annexure P-5) passed by respondent No. 2 is not sustainable and is accordingly set-aside. Deemed approval is granted to respondent No. 3 and he is further directed to carry out necessary corrections as expeditiously as possible and in no event later than 31st December, 2016. However, before proceeding with the matter, he shall issue notice of appearance to the concerned parties and only after hearing them would he proceed further in the matter.

24. With the aforesaid observations, the petition stands disposed of, so also the pending application(s), if any, leaving the parties to bear their costs.