

(2002) 11 AHC CK 0118
In the Allahabad High Court
Case No : C.M.W.P. No. 47368 of 2002

Radhey Shyam and Others

APPELLANT

Vs

District and Sessions Judge and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 32(2)
Civil Procedure Code, 1908 (CPC) — Section 115
General Clauses Act, 1897 — Section 6

Citation : (2003) 1 AWC 628

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : R.N. Yadav, for the Appellant; Manish Nigam and S.K. Singh, S.C.,
for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri. R. N. Yadav for petitioners and Sri Manish Nigam for caveator-respondent No. 3.

2. Petitioners have challenged an order dated 16.11.2002 passed by Additional District and Sessions Judge (Court No. 18), Allahabad, by which he has dismissed Civil Revision No. 249 of 2002, Radhey Shyam and Ors. v. Kalloo. The revision was filed against an order rejecting the application 35-ga for recalling the order by which the trial court had accepted the Commissioner's report. It has been dismissed on the ground that after the repeal of U. P. Amendment Act No. 31 of 1978 and Act No. 17 of 1991 to Section 115 of C.P.C. 1908 by C.P.C. (Amendment) Act No. 46 of 1999, the revision is not maintainable.

3. Counsel for petitioners has placed reliance upon a judgment of this Court dated 9.10.2002 in Transfer Application No. 36 of 2002, Lallan v. Special Judge, Jaunpur and Ors., by which it has been held that revisions u/s 115, C.P.C., which were instituted before the District Judges prior to 1.7.2002 can be heard and disposed of by the District Judges, and that the jurisdiction to decide these

revisions has not been taken away. This Court relied upon the judgments of Supreme Court in Commissioner of Income Tax, Bangalore Vs. Smt. R. Sharadamma, in which it was held that if the amendments are 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. In M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, and Central Bank of India v. Vith Additional District Judge, Kanpur Nagar. 1997 (2) AWC 711 : 1997 (1) ARC 312 the same view was taken that duly instituted matters shall be decided by the same Court, notwithstanding the change in the forum.

4. Sri Manish Nigam, appearing for contesting respondents submits that right of decision by the same forum is not a vested right, and that a reading of the saving Clause 32 (1) (i) of the Cr. P.C. (Amendment) Act, 1999 shows a different intention with regard to the pending revisions. According to him. the pending revisions are not saved by Section 32 of the Amending Act. He has placed reliance in State of Punjab v. Mohar Singh. AIR 1955 SC 84 and upon Full Bench decision of this Court in Pratap Narain Agarwal Vs. Ram Narain Agarwal and Others, where it was held that the line of enquiry would be not whether, the new Act expressly keeps alive, old right and liabilities, but where there is manifest intention to destroy them. Sri Manish Nigam submits that in Pratap Narain Agarwal Vs. Ram Narain Agarwal and Others, a Full Bench of this Court held after the Cr. P.C. (Amendment) Act 104 of 1976, that where the execution proceedings were pending at the commencement of 1976 Act, appeal against the orders were not maintainable. The language of Section 97 (2) (a) of the 1976 amending Act does not permit an interpretation to hold that a right to appeal is preserved in respect of all pending execution applications. He has also cited before the Court Full Bench decision of this Court in Jupiter Chitfund (P.) Ltd. v. Dwarikadhish and others, where this Court considered the effect of the U. P. Amendments of 1970, 1972 and 1973 to Section 115, C.P.C. It was held that Section 115 as amended by State Legislature was inconsistent with the Central Act because it confers revisional jurisdiction on the District Courts in some cases, which under the Central Act were with High Court and because of this inconsistency the State Amendment stood repealed. In view of transitory provisions contained in Section 97 (2) (o) of the Central Act, 104 of 1976, Section 115 as amended by the State Legislature in 1973. will continue to govern revisions which had been admitted after the preliminary hearing on or before 31.1.1977.

5. It is submitted by counsel for respondents that Section 32 (2) (i) of the C.P.C. (Amendment) Act, 1999 (Act No. 46 of 1999) does not save pending revisions. This saving clause provides that notwithstanding that the provisions of this Act have come into force or repeal in Sub-section (1), has taken effect, and without prejudice to the generality of the provisions, Section 6 of the General Clauses Act, 1897 (10 of 1897), the provisions of Section 115 of the principal Act, as amended by Section 12 of this Act. shall not apply, to or effect in proceedings for revision which has been finally disposed of. This provision, according to

respondents, only saves the revisions which have been finally disposed of. The intention of the amending Act, it is submitted does not appear to save the revisions under the said amendments, which have been repealed u/s 32 (1) of the amending Act No. 46 of 1999. The other provisions of the saving clause, namely, Sub-sections (f), (j), (k), (l), (m) to (v) save the pending proceedings in respect of amending sections and give the intention of the Legislature. In case of revisions, such intention has not been expressed. It is submitted that after the amendment by amending Act No. 46 of 1999, the powers of saving revisions have been restricted, and there is significant restriction on the powers of the High Court. After the amendment, the High Court cannot interfere even if the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. The Legislature intended to restrict the powers only to the High Court and further places restriction in interfering in the orders except on the ground where the order, if it had made in favour of the parties complying for revision would have finally disposed of the suit or other proceedings.

6. Section 32 (1) of the C.P.C. (Amendment) Act, 1999, has repealed all amendments made or provisions inserted in the principal Act by a State Legislature or High Court, before the commencement of the Act, which are inconsistent with the provisions of the principal Act, as amended. The U. P. Act No. 31 of 1978, as amended by U. P. Act No. 17 of 1991, had substituted Section 115 in its application to Uttar Pradesh. The U. P. Amendment also gave power to District Courts to entertain revision in cases the valuation did not exceed rupees one lac. In view of the Jupiter Chitfund (P.) Ltd., (supra) the U. P. Amendments are clearly inconsistent with the Section 115 as amended by the C.P.C. Amendment Act. 1999 and thus the U. P. Amendments have been repealed. In Commissioner of Income Tax, Bangalore v. Smt. Shardamma (supra). Supreme Court held that It is true that no litigant has invested right in the matter of procedural law, but, where the question is of change of forum, it ceased to be a question of procedure only. The forum of appeal or proceedings, is a vested right as opposed to pure procedure to be followed before the particular forum. The right becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance, and unless the Legislature has by express words or by necessary implication, clearly so indicated, the vested right will continue in spite of the change of jurisdiction of the different Tribunals or Forums.

7. In M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, the scope of Section 6 of the General Clauses Act was interpreted as follows :

"23. This leads us to the question, whether in a case where Section 6 of the General Clauses Act is applicable, what effect it would have on a pending proceeding, when repealing provisions come into operation. It is not in dispute in the present case that the Delhi Rent Act is the Central Act hence Section 6 of the General Clauses Act is applicable. We may also record here, in none of the

aforesaid decisions cited by the learned counsel application of Section 6 of the General Clauses Act was considered.

24. We may quote here Section 6 of the General Clauses Act. 1897 :

"6. Effect of repeal.--Where this Act. or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect : or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

25. The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactments under the General Clauses Act. Central Act or Regulations made after the commencement of the General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or Regulation, unless a different intention appears from such repeal, it would have no effect over the matters covered in its clauses viz., (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or affect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right. Thus, the central theme which spells out is that any investigation or legal proceeding pending may be continued and enforced as if the repealing Act or Regulation had not come into force.

26. As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties get crystallized on that date.

The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find Clause (c) of Section 6, refers the words "any right, privilege, obligation acquired or accrued" under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being "acquired" or "accrued" on the date of the repeal would not get protection of Section 6 of the General Clauses Act."

8. In *Om Prakash and Another Vs. Moti Lal and Others*, Section 25 of the Provincial Small Causes Court Act was amended by U.P. Act No. 17 of 1957. The jurisdiction of the High Court was transferred to the District Courts. It was urged that in view of the amendment, the High Court must return after 4.6.1957 all applications pending before it for presentation to the Court of District Judge. Chief Justice, O. H. Mootham relied upon Section 6 of the General Clauses Act which is based upon maxim of law : "*Nova constitutio, futuris formam imponere debet, non praeteritis*", a new state of the law ought to affect the future not the past which is a well known maxim of law, the foundation of which, as pointed out in *Pinhorn v. Sonster*, (1852) 8 EX. 138 at p. 142 (D), is that it cannot be supposed that the Legislature meant to do injustice. The maxim is the foundation of the rule that a statute will not be presumed to have retrospective effect, but it embodies, a principle of more general application. The Full Bench held that High Court retained jurisdiction to hear all such applications, as were pending on the date on which the amending Act came into force, u/s 25 of the Provincial Small Causes Court Act upto 4th June. 1957.

9. A close reading of the provisions of amended Section 115 by C.P.C. Amendment Act, 1999, shows that the powers of the Court in exercise in revisional jurisdiction has been further restricted. Section 32 (2) of the amending Act saves only those revisions which have been finally disposed of. This saving clause, in my opinion, is not superfluous or otiose and saves all those orders passed in revision application which were made under un-amended Section 115 of the principal Act. The orders cannot be called into question on the ground that they were made in the liberal exercise of powers in revision where the Courts interfered on the ground of failure of justice or irreparable injury. It also appears to take into account various State Amendments where the powers of revision were amended by substitution or otherwise. This saving clause, however, does not provide for any express or implied intention which may run contrary to affect to save revision applications which were admitted by District Judges and were pending before 1.7.2002. The fact that other saving clause expressly save the appeals as in the case of amendment of Section 96 and Section 100, C.P.C. cannot also be called in aid to express a different intention to the saving of the pending revision.

10. Section 6 of the General Clauses Act is, therefore, applicable and can be pressed into service for saving the right of pursuing pending revision

applications. A right to file revision cannot be equated to that of a right to file an appeal. Whereas the right to appeal is conferred with statute, right to revision is a supervisory power and is to be exercised by the revisional court at its discretion where the subordinate courts erred in exercise of its jurisdiction. Such a right cannot, therefore, be vested or acquired under Clause (c) of Section 6. However, if the revision has been admitted and the superior court has prima facie exercised its discretion to admit the revision for hearing, the right to pursue such revision accrues to the applicants and is saved u/s 6(c) of the General Clauses Act, 1897. In this connection, it is relevant to cite another case of Supreme Court in *M.S. Shivananda v. Karnataka S.R.T.C.*, 1908 (1) SCC 156. Para 15 of this judgment is quoted as below :

"15. The distinction between what is, and what is not a right preserved by the provisions of Section 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere hope or expectation of, or liberty to apply for, acquiring a right. In *Director of Public Works v. Ho Po Sang* Lord Morris, (1961) 2 All ER 721 speaking for the Privy Council, observed :

It may be, therefore, that under some repealed enactment, a right has been given but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal, the former is preserved by the interpretation Act. The latter is not."

11. For the aforesaid reasons, I do not propose to differ with the view expressed in *Lallan v. Civil Judge, Jaunpur* (supra), except to add that only such revisions u/s 115, C.P.C. which were instituted before District Judges prior to 1.7.2002 shall be saved, heard and disposed of by the District Judges where the Court had applied its mind and had admitted the revision application for hearing. The revision applications which were not admitted and in which the delay, if any, was not condoned, shall not survive for hearing.

12. The writ petition is accordingly allowed. The impugned order dated 16.10.2002 passed by the Additional District Judge (Court No. 18), Allahabad in Revision No. 249 of 2002 is set aside. The court below shall hear and decide the revision in accordance with law.