
(1967) 09 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2340 of 1962

Ram Narain Singh

APPELLANT

Vs

Darshan and Anr

RESPONDENT

Date of Decision : 11-09-1967

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 89

Citation : (1967) 37 AWR 808

Hon'ble Judges : M.H. Beg, J

Bench : Single Bench

Advocate : O.N. Mehrotra, for the Appellant; Raj Kishore Singh and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

M.H. Beg, J.—This writ petition is directed against an order passed by a learned Munsif u/s 89 of the U.P. Panchayat Raj Act setting aside the judgment and decree of a Nyaya Panchayat in the following circumstances: The Petitioner had filed a suit for the recovery of Rs. 126.50 with interest against Darshan, opposite party No. 1, in the Nyaya Panchayat Biparpur in the district of Sultanpur. Darshan appeared and denied the correctness of the claim. The Nyaya Panchayat believed the case set up by the Petitioner which was supported by a pronote signed by Darshan and a witness named Deen Mohammad. Darshan also entered the witness box and denied his signature on the pronote. In the course of its judgment, the Nyaya Panchayat not only commented on the conduct of Darshan but held definitely that money was received by Darshan who affixed his signature showing the receipt of money on the pronote. The Nyaya Panchayat observed that Darshan could make signatures of two kinds. In any case, it believed the Plaintiff's version that the signature on the document in question was that of Darshan. It gave good grounds for believing the Petitioner's case.

2. The Petitioner's allegation that Darshan filed a revision application u/s 89 of the Act on 8-12-1961 beyond time against the judgment and order of the Nyaya

Panchayat dated 30-7-1961 admitted by the opposite party, but the opposite party relied upon an affidavit, giving grounds for condonation of delay, said to have been filed before the Munsif who made no reference to it. It was contended on behalf of the Petitioner that the learned Munsif had no jurisdiction to entertain an application "beyond 60 days from the date of the order complained of or where personal service of summons had not been affected on the Applicant from the date of the knowledge of the order...." In the instant case, there could be no question of want of personal service as Darshan appeared before the Nyaya Adalat. The jurisdiction to interfere u/s 89 of the Act, however, is not confined to cases in which there is an application invoking it. The Munsif could interfere suo moto also. Nevertheless, it would have been more proper for the learned Munsif to have recorded a finding whether the grounds alleged by Darshan for delay in filing his application u/s 89 of the Act entitled Darshan to a condonation of delay.

3. The more important question was whether the learned Munsif could, either on his own motion or on an application made by a party, set aside findings of fact on the grounds given by him and hold that it was a case of "material injustice". It is a condition precedent to an interference u/s 89, in such a case, that it should appear to the Munsif "that injustice or material irregularity has occurred." The Explanation to Section 89 lays down: "Failure to exercise the jurisdiction vested by law or exercise of jurisdiction in excess of that vested by law shall, for purposes of this section, be deemed to be a material irregularity". As regards the interpretation of this section, it may be conceded that the "ejusdem generis" rule does not apply inasmuch as the word "injustice", which is wider, appears before and not after the words "material irregularity" and "material irregularity" is explained so that its connotation may be fixed and circumscribed. Nevertheless, the broader rule of interpretation, "noscitur a sociis", applies. This means that the meaning of a term must be gathered from the associated words or the context. The learned Munsif, therefore, correctly used the term "material injustice" to convey the kind of injustice which was required, but misunderstood its implications as applied to the facts of the case as stated by him.

4. The required injustice must at-least be manifest. It is true that words used in Section 89 indicate that the injustice must appear to the officer concerned and not to some body else. But, that does not mean that the injustice involved must be judged entirely by subjective standards. It must be an injustice which is reasonably capable of being considered "injustice" on a bare reading of the Munsif's order. It should be a case of palpable injustice. It should not be merely a case of possible injustice to one side which means an equal possibility of injustice to the other side if a contrary view were taken. Merely equal possibilities of a correct or wrong view on either side do not make it a case of manifest injustice so as to justify interference u/s 89 of the Act.

5. A perusal of the order of the learned Munsif shows that he had only disbelieved the Plaintiff's evidence that consideration was received by Darshan on the ground that the Petitioner Plaintiff's witness Deen Mohammad had stated

that no payment was made before him. Such a discrepancy can occur due to failure of the witness to observe well or a lapse of memory or even a very brief time lag between the actual payment and the execution of the document. The whole transaction may appear to one person as one of payment at the time of the execution whereas to another, who was called in only to witness and who may not have actually seen the payment, there may have appeared to be no payment at the time of execution. The ground given by the learned Munsif would only show that the Plaintiff's evidence did not seem to be fabricated to suit the case and that the Plaintiff's case could be truthful. No other ground was given by the learned Munsif for allowing the revision application on the ground that "material injustice" had been caused. Such a reappraisal of evidence was palpably erroneous.

6. The learned Munsif did not take into account at all the finding of the Nyaya Panchayat that the pronote had been actually signed by Darshan. If Darshan disputed the signature he could have atleast produced expert evidence before the Munsif. Without duly considering and setting aside the finding given by the court which saw witnesses depose, that the signature on the document was that of Darshan, the learned Munsif could not, justly or properly, set aside the decree of the Nyaya Panchayat. The jurisdiction u/s 89 of the Act is not an appellate jurisdiction. Even appellate jurisdiction cannot be exercised without setting aside a crucial and decisive finding of fact which would make Section 118 of the Negotiable Instruments Act applicable. The Nyaya Panchayat had obviously balanced probabilities better and more correctly. I, therefore, hold that the learned Munsif's judgment is vitiated by errors apparent on the face of the record. It is hereby quashed.

7. It is urged on behalf of the opposite parties that there may be other grounds of injustice not examined by the teamed Munsif. The result of quashing the order of the learned Munsif is that the application of Darshan, opposite party, will be deemed to be pending before the Munsif South Sultanpur. It will now be disposed of in accordance with law after examining also the grounds of delay urged by Darshan in filing his application u/s 89 of the Act.

8. I make no order as to costs.