
(2005) 07 PAT CK 0025

In the Patna High Court

Case No : F.A. No's. 149, 10, 134, 328, 357 and 371 of 2003, 92, 116, 137 and 214 of 2004 and 3, 72, 73, 76 and 77 of 2005

Ramsagar Kewat and Others

APPELLANT

Vs

Shivalak Kewat and Others etc. etc.

RESPONDENT

Date of Decision : 07-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Limitation Act, 1963 — Section 5

Citation : (2005) 3 PLJR 360

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the appellants in all these cases and Mr. Sukumar Sinha, Senior Advocate who has appeared in these matters amicus curiae on Court's request. On an earlier date on submission of Mr. Sukumar Sinha an order was passed in F. A. No. 149 of 2003 for listing the matter alongwith records of F.A. No. 182 of 2002 (Devendra Prasad Singh vs. Ram Chandra Prasad Singh and Ors.). The records of that case show that in view of similar defect the Court had asked the Stamp Reporter to make a fresh Stamp Report on certain issues including an issue as to whether the Bengal, Agra and Assam Civil Court (Bihar Amended) Act, 1995 (Bihar Act 19 of 1996) (hereinafter referred as the Amendment Act) shown to have been published in the Bihar Gazette (Extraordinary) on 1.10.1996 would be effective and enforceable from 1.10.1996 or with effect from 16.2.2005, a date on which as per Stamp Reporter the Hon'ble Chief Justice had approved the Amendment Act. The Registrar General was also directed to submit his comments in the matter.

2. On behalf of appellants Mr. Sukumar Sinha submitted that the comments of the Registrar General and annexures therewith show the correct factual position. They disclose that although the Gazette notification whereby the Amendment Act (Bihar Act 19 of 1996) has been published bears the date 1.10.1996 as the date of Publication, contrary to established practice and the directive of the Law

Department, Government of Bihar, copies of the Bihar Gazette became available with the Law Department only on 4.8.2004 (as per letter of the Law Secretary dated 26.4.2005). Thereafter on the asking of this Court copy of the Gazette notification appears to have been made available to the Registry of this Court soon thereafter. The report of the Registrar General does not mention the date of receipt of the Gazette notification. He should have mentioned that date clearly. Apparently, the official Gazette was received in this Court some time in September, 2004. After losing some valuable time without any good reason, the Registry brought the matter to the notice of the Hon''ble Acting Chief Justice for concurrence/approval under an impression that it is required "because of usual procedure and precedence". The concurrence/approval by the Hon''ble Acting Chief Justice, as per report of the Registrar General was granted on 16.2.2005 and on receipt of the file the Registry of the Court communicated the whole matter to the Stamp Reporter on 19.2.2005. Thereafter the Stamp Reporter has made the reports and pointed out defects in these appeals that since the pecuniary jurisdiction of the District Judge to hear such appeals has been raised from under Rs. 60,000/- to under Rs. 2 Lakhs by the Amendment Act, hence (as per notes of the Registrar General) concerned appeals which have been filed in this Court after 16.2.2005 should be subjected to provisions of the Amendment Act and returned to the concerned appellants/their counsel for being presented in the proper forum i.e. before the concerned District Judge. Such clear stand with due reference to the date 16.2.2005 has been taken in the notes of Registrar General dated 25.5.2005 available in the records of F.A. No. 182/2002. A Copy of that alongwith annexures should be placed in the records of this case also.

3. The simple issue arising for determination in the light of defect regarding maintainability of these appeals in this Court on account of enhanced pecuniary jurisdiction of District Judges to hear such appeals is whether the Amendment Act would be effective from 1.10.1996, the date of publication mentioned in the Gazette notification or from 16.2.2005, the date when the Registry of this Court obtained concurrence/approval of Hon''ble the Chief Justice. So far as the effect of the Amendment Act is concerned there is no dispute that the amendment relates to law of procedure and since the date of its coming into force the forum of appeal in all suits having valuation of less than Rs. 2 lakhs will be the Court of District Judge of concerned districts and not the High Court. This view is fully in accordance with Judgment of a Division Bench of this Court in the case of Bhim Singh vs. Mohan Lal Agrawal reported in 1991(2) (PLJR) 325 and a Full Bench judgment in the case of Gobardhan Lal Soneja Vs. Binod Kumar Sinha and Others . Both the aforesaid judgments were in the context of similar but more comprehensive amendments in Sections 18, 19 and 21 of Bengal, Agra and Assam Civil Courts Act, 1887 as amended by Bihar Amendment Act, 1987.

4. The Amendment Act simply substitutes "2 Lakhs" in place of "60,000/-" in Clause (a) of Sub-section (1) of Section (21) of the Bengal, Agra and Assam Civil Courts Act 1887 and provide that the Amendment Act shall come into force at once. As an effect of the aforesaid Amendment an appeal from a decree or order

of a Subordinate Judge shall lie to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made was less than Rupees 2 Lakhs and to the High Court in other cases. A perusal of relevant provisions of the Bengal, Agra and Assam Civil Courts Act, particularly Sections 19(2) relating to jurisdiction of Munsif and Section 21(2) and (4) relating to appeals from decree or order of a Munsif to the District Judge and in some cases to the Subordinate Judge makes it clear that they provide for extending the jurisdiction of the concerned Court by notification in the Official Gazette by the State Government on the recommendation of the High Court or by the latter with the previous sanction of the State government. But in respect of appeals from a decree or order of a Subordinate Judge covered by Section 21 (1) there is no statutory provision of consulting the High Court or seeking its concurrence/approval. Hence the effective date of commencement of the Amendment Act can not be made dependent upon the concurrence/approval of Hon''ble the Acting Chief Justice although the note of the Registrar General makes a suggestion to this effect. The suggestion is not found fit to be accepted. In accordance with provisions of the Bihar and Orissa General Clauses Act, particularly sections 6 and 7 thereof, the day on which the assent of the President was first published in the Official Gazette shall be the date on which the Act would come into operation. This is the only conclusion possible in view of Section-6 (1-A) (ii) of that Act which is clearly applicable. Section-7 of the Bihar and Orissa General Clauses Act requires that in every Bihar Act the date of such publication as is mentioned in Section-6, Sub-Section (1) shall be printed either above or below the title of the Act and shall form a part of the Act. The Gazette notification mentions the date of publication as 1st October, 1996. In absence of any case of fraud or proved error as per law this must be accepted as the date on which the Amendment Act came into force. The note of the Registrar General and the submissions on behalf of appellants to the effect that since the copies of the gazette notification were not communicated by the Govt, press till the year 2004 hence it be presumed that the Act was published in the year 2004 is not found fit to be accepted because it would make an Act duly passed by a competent legislature dependent upon an administrative or clerical act of Govt, employees for determining the date on which Act takes effect. Such a situation is not warranted either by any Statutory provision under General Clauses Act or any other law. A notification of the executive such as one which was subject matter of judgment of the Supreme Court in the case of Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., would stand on a different footing. That related to a notification affecting substantive rights. It would generally operate prospectively. In the judgments of this Court noticed rendered earlier by a Division Bench and by a Full Bench it has been held that an amendment like one in the Amendment Act whereby a change is brought about in the forum of appeal, is not a change in substantive law but a change in procedural law only. Such a change of law operates retrospectively in the sense that in respect of earlier filed suits also the affected person has to go to the new forum, even if his cause of action had accrued prior to the change of forum brought about by the

Amending Act. As per settled law there is only a vested right of action or appeal but no vested right of forum.

5. Before considering the practical problems and their solutions, it is useful to keep in mind that while enacting the Amendment Act in 1996 the intent and purpose of the legislature was clearly to unburden this Court of certain appeals on the basis of valuation at that point of time itself. The Courts are duty bound to respect and implement the intention of legislature when the law in question does not suffer from invalidity.

6. The Division Bench in the case of Bhim Singh (supra) in paragraph-18 considered some practical problems and clarified that the appeals filed in this Court before the Amendment Act shall have to be heard by this Court. In that very paragraph the Division Bench further noticed that a large number of appeals were filed in this Court following the judgment in the case of Kartik Nath Jha which wrongly held that right of forum was also a substantive right. Since that judgment was over ruled by the Division Bench, in order to avoid hardship to the litigants it was held that such appeals whose valuation permitted filing in this Court as per the unamended provision of the relevant statute and which had been admitted by this Court for hearing shall be heard by this Court. But those appeals whose valuation as per amended Act required filing before the District Judge and which had not been admitted shall be returned to the appellants for filing before the District Judge concerned. The District Judge was directed to condone the delay in filing such appeals if they had been filed in this Court within time and if they are filed within 14 days from the date of receipt of memorandum of appeal from the office of this Court.

7. In these cases it was submitted on behalf of the appellants that hardship has arisen on account of non-communication of copies of the Gazette notification containing the Amendment Act and hence a similar approach be adopted in respect of appeals filed till 19.2.2005 when the Gazette notification was made available to the Stamp Reporter of this Court or at least till 16.2.2005 when the Amendment Act was noticed by the Hon'ble Acting Chief Justice. No doubt, the issue of hardship in such circumstances has to be considered and addressed because procedural laws are meant to subserve ends of justice and not to thwart it. The notes of the Registrar General points out that a large number of appeals have been filed and entertained by this Court after the Gazette notification dated 1.10.1996 because its communication was delayed by several years. Objections on the basis of amended pecuniary jurisdiction of District Judges to hear such appeals could be raised by the Stamp Reporter of this Court only on or after 19.2.2005. Prior to that several appeals must have been disposed of on account of defects not removed or on merits and many valuable rights decided by way of orders on abatement, injunction etc. Such a situation has arisen because of no fault of the litigants. Fault if any is of the State and this Court hence a just solution must be found to protect the innocent litigants from hardship. For that purpose and to protect the interest of justice it is made clear that the appeals

filed prior to 1.10.1996 shall have to be heard by this Court. Appeals from suits having valuation of less than Rs. 2 lakhs and filed on or after 1.10.1996 but before 19.2.2005 should be treated to have been filed before the proper court and transferred to this Court for decision u/s 24 of the Code of Civil Procedure. All orders passed in such appeals should be treated to be by a court of competent jurisdiction. Such appeal which are still pending in this Court may now be transferred to the court of respective District Judges competent to hear such appeals. After the records are received by the Court concerned on such transfer such courts will proceed in those appeals from the point at which it is transferred. The office should list such matters for orders at the earliest indicating that such appeals are for formal orders of transfer to respective courts so that concerned parties who have already appeared may have notice of such transfer. Out of present 15 appeals 11 belong to this category. Only FA. 72, 73, 76 and 77 of 2005 have been filed in March 2005. Hence, the rest 11 appeals are ordered to be transferred to courts of concerned District Judges.

8. So far as appeals filed on or after 19.2.2005 having suit valuation less than Rs. 2 Lakhs are concerned the memorandum of those appeals be returned to the appellants or their counsel at the earliest, preferably within two weeks for being presented or filed before the District Judge concerned. The District Judge in such cases shall condone the delay in filing the appeal if it was filed within time in this Court and if filed within 14 days from the date of receipt of memorandum of appeal from the office of this Court. In other cases if application u/s 5 of the Limitation Act 1963 is filed, the District Judge shall dispose of the same in accordance with law. It is made clear that F.A. 72, 73, 76 and 77 of 2005 belong to this category. The office notes and objections of the Stamp Reporter in these appeals are disposed of accordingly. Let copies of this order be sent forthwith to the District Judges and the Law Secretary, Government of Bihar. The latter is directed to ensure that an effective policy decision is taken and necessary directives issued by the State Government so that in future the Government Press does not create such a situation. All Gazette publications required to be communicated to the Law Department and this Court must be dispatched promptly by special messenger so as to reach within one week of publication. Default must be viewed seriously so as to attract prompt and effective disciplinary action. Law making is a solemn and serious business. It must be treated as such by all concerned including (he Government Press.