

(2023) 07 GUJ CK 0021
In the Gujarat High Court
Case No : R/First Appeal No. 2187 Of 2000

Sardar Sarovar Narmada Nigam

APPELLANT

Vs

Navinchadra P.Traslwala. & 1 Other(S)

RESPONDENT

Date of Decision : 07-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 135
Gujarat Civil Courts Act, 2005 — Section 30, 30(3)
Bombay General Clauses Act, 1904 — Section 7

Citation : (2023) 07 GUJ CK 0021

Hon'ble Judges : Devan M. Desai, J

Bench : Single Bench

Advocate : Sejal K Mandavia

Final Decision : Disposed Of

Judgement

Devan M. Desai, J

1. Heard learned advocate Ms. Ritu Singh for learned advocate Ms. Sejal K. Mandavia for the appellant. Perused the record.

2. On perusal of papers, it appears that valuation of the suit is Rs.2,88,961/-. The suit is of the year 1992. Present appeal has been filed in the year 2000. During the pendency of the appeal, Legislature has passed Gujarat Civil Courts Act, 2005, wherein there is a specific provision under Section 30 (3) to the effect that all the appeals and suits etc. pending on that date, which are valued at less than Rs.5,00,000/-, are to be transferred to the concerned trial Court.

3. Admittedly, the present Appeal has been filed against the judgment and decree dated 5.5.2000 passed by Civil Judge (S.D.), Bharuch in Special Civil Suit No.99 of 1992. It is also not in dispute that the valuation of the matter is less than Rs. 5 Lakhs at the time of filing of the present Appeal. It is also admitted fact that pending this Appeal, the Bombay Civil Courts Act, 1869 has been repealed by virtue of Section 30 of the Gujarat Civil Courts Act, 2005. The

provisions relating to the Appeals in the original Act is as follows:

"Appeals. (1) Appeal from the decrees and others passed by a court of District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.

(2) Appeals from the decrees and others passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie

(a) to the Court of the District Judge of the district when the amount of value of the subject matter of the original suit or proceedings is less than five lakhs of rupees [or such other sum as the High Court may, by notification, from time to time specify];

(b) to the High Court in other cases.

3. Appeals from the decrees and others passed by a Court of Civil Judge in suits or proceedings of a civil nature shall, when such appeals are allowed by law, lie to the Court of District Judge of the district:

Provided that the High Court may, in consultation with the State Government, by notification, direct that such appeals against decrees and orders may lie to the Court of Senior Civil Judge, when the amount or value of the subject matter of the suit or proceedings is less than one lakh of rupees and thereupon appeals shall be preferred accordingly.

4. The provision of this section will apply to all decrees and others made after the appointed date irrespective of the fact whether the suits or proceedings in which they are made were instituted before or after the appointed date.

Thus, by virtue of this provision, the jurisdiction of the Appellate Court i.e. District Court was less than Rs. 5 Lakhs.

4. The provisions of Section 30 reads as under:

30. Repeal and savings: (1) On and from the appointed date the Bombay Civil Courts Act, 1869, in its application to the State of Gujarat, shall stand repealed.

(2) Such repeal shall not affect the previous operation of the enactment so repealed and any thing done or any action taken including the districts formed, limits defined, Courts established or constituted, appointments, rules or orders made, functions assigned, powers granted, seal, or forms prescribed, jurisdiction defined or vested and notifications or notices issued by or under the provisions of the said Act and deemed to have been done or taken under the provisions thereof shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force unless and until superseded by anything done or any action taken under this Act.

(3) Notwithstanding anything contained in subsection (1) or any other provisions

of this Act or in the enactment repealed by subsection (1) or in any other law or provision having the force of law all suits, appeals and proceedings connected therewith, pending before any Court, which under this Act have to be instituted or commenced in another Court, shall on the appointed day, stands transferred to such other Court and shall be continued and disposed off by such other Court in accordance with law as if such suit and proceedings had been instituted or commenced in such other Court under this Act.

(4) If there be any doubt as to which Court any suit, appeal or proceedings shall stand transferred or as to which Court any appeal shall be preferred in accordance with the provisions of this Act, the Court designated by the High court shall be the Court to which such suit, appeal or proceedings shall be transferred or such appeal shall be preferred, and the decision of the High Court shall be final.

(5) Notwithstanding such repeal, the provisions of Section 7 of the Bombay General Clauses Act, 1904 shall apply in relation to the repeal of the Bombay Civil Courts Act, 1869 as if the Act had been an enactment within the meaning of the said Section 7."

4.1 By virtue of subsection (3) of Section 30, the specific provision has been made for transferring of the Appeal, at the time of coming into operation of the Act, 2005, with specific wording that all such appeal shall stand transferred to the appropriate Court. Now in view of the factual aspect of this case, it is admitted position that the present Appeal ought to have been sent back to the learned District Court.

4.2 Now so far as the Order rendered in First Appeal No. 5 of 2013 is concerned, it is admitted fact that the controversy therein was that by virtue of Notification dated 14.10.2014, the pecuniary appellate jurisdiction of the District Court as well as subordinate Civil Court was revised. However, there was no corresponding amendment in sub-section (3) of Section 30 of the Act. It is worthwhile to note that by dealing with the FA No. 5 of 2013, this Court has taken into consideration the catena of decisions of A.P. Civil Courts (Amendment) Act, 1989 arose before the Bench of the Andhra Pradesh High Court as well as decision of the Hon'ble Supreme Court in case of Garikapati Veeraiah v. N. Subaiya Chaudhary, reported in [1957] 1 SCR 488, and Para11 of which has been quoted as under:

"11. The Supreme Court was considering this issue and in that context, after considering the decision of the Supreme Court in the case of Garikapati Veeraiah v. N. Subaiya Chaudhary reported in [1957] 1 SCR 488 observed as under:

2o. In this context, we may refer with profit to the Constitution Bench judgment in Garikapati Veeraya v. N. Subbiah Choudhry and others [7]. In the said decision, the Constitution Bench referred to the leading authority of the privy council in Colonial Sugar Refining Company Ltd. v. Irving[8]. The Constitution Bench observed that the doctrine laid down in the decision of the privy council in Colonial Sugar Refining Company Ltd. (supra) has been followed and applied by

the Courts in India. The passage that was quoted from the Privy Council's judgment is as follows: -

"As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, Their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

21. Thereafter, the larger Bench referred to number of authorities and proceeded to cull out the principles as follows:

"23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

22. On a proper understanding of the authority in *Garikapati Veeraya* (supra), which relied upon the Privy Council decision, three basic principles, namely,

22.1 The forum of appeal available to a suitor in a pending action of an appeal to a superior tribunal which belongs to him as of right is a very different thing from regulating procedure;

22.2 That it is an integral part of the right when the action was initiated at the time of the institution of action; and

22.3 That if the Court to which an appeal lies is altogether abolished without any forum constituted in its place for the disposal of pending matters or for lodgment of the appeals, vested right perishes, are established.

23. It is worth noting that in *Garikapati Veeraya* (supra), the Constitution Bench ruled that as the Federal Court had been abolished, the Supreme Court was entitled to hear the appeal under Article 135 of the Constitution, and no appeal lay under Article 133. The other principle that has been culled out is that the transfer of an appeal to another forum amounts to interference with existing rights which is contrary to well known general principles that statutes are not to be held retrospective unless a clear intention to that effect is manifested.

24. In *Dhadi Sahu* (supra), it has been held thus:

"18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for changeover of proceedings, from the court or the tribunal where they are pending to the court or the tribunal which under the new law gets jurisdiction to try them.

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21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases 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 a 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, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums."

25. At this stage, we may state with profit that it is a well settled proposition of law that enactments dealing with substantive rights are primarily prospective unless it is expressly or by necessary intention or implication given retrospectively. The aforesaid principle has full play when vested rights are affected. In the absence of any unequivocal expose, the piece of Legislation must exposit adequate intendment of Legislature to make the provision retrospective. As has been stated in various authorities referred to hereinabove, a right of

appeal as well as forum is a vested right unless the said right is taken away by the Legislature by an express provision in the Statute by necessary intention."

4.3 The Judgment of the Hon'ble Supreme Court in case of Commissioner of Income Tax v. Dhadi Sahu [1994 Supp. 1 SCC 257], has also been referred to and the observation made therein is also been incorporated in Para12, which reads as under:

"12. On a perusal of the oral judgment dated 17.06.2015 and the judgement dated 29.05.2020, it is borne out that this judgment of the Hon'ble Supreme Court in the case of Garikapati Veerayya (supra) has been also extensively considered and it was held that the forum of appeal available to a suitor in a pending action of an appeal, which belonged to him as of right is a very different thing from regulating procedure. That it is an integral part of the right when the action was initiated at the time of the institution of the suit, would indicate that the right of appeal is not a mere matter of procedure, it is a substantive right. Based on these observations of the Hon'ble Commissioner of Income Tax v. Dhadi Sahu (1994 Supp.1 SCC 257] the Supreme Court observed that right of appeal as well as a forum is a vested right unless the said right is taken away by the legislature by an express provision in the statute by necessary intention.

Considering para 24 in the case of Dhadi Sahu (supra) where it was considered that the forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum, it was observed that the right becomes a vested right when the proceedings are initiated in the Tribunal of the first instance and unless the legislature by the 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. The Apex Court in the case of Dhadi Sahu (supra) observed as under:

"18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change- over of proceedings, from the court or the tribunal where they are pending to the court or the tribunal which under the new law gets jurisdiction to try them.

21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases 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 a 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, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums."

4.4 Thus, the above decisions clearly indicate that if there is express words or by necessary implication clearly indicated by the legislature regarding the standing

over transfer of the proceedings, then in view of that expressed provisions, the matter needs to be conducted by the new forum or by the same forum.

5. Admittedly as observed earlier, when present appeal was filed, the old Act of Bombay Civil Courts Act, 1869 was in existence and new Act i.e. The Gujarat Civil Courts Act, 2005 has been enacted wherein there is specific provision in subsection (3) of Section 30 regarding transfer of the Suit and / or Appeal to the Court wherein there is enhancement of the monetary jurisdiction of that Court. Therefore, since the provisions of Section 30 of the Gujarat Civil Courts Act, 2005 is applicable in the present case, the present Appeal is required to be transferred to the appropriate Court having jurisdiction as was done in other matters pending before this Court at the relevant time. One of such order has been passed by the Coordinate Bench on 4.2.2021 in Appeal From Order No.5444 of 1995 in the case of M/s. H.K. Chemicals v. M/s. Ajanta Chemicals – A Partnership Firm, which reads as under:

“6. Thus, in view of the aforesaid facts and circumstances, the submission made by the learned advocate for the Appellant is accepted and the value of the subject matter being less than Rs.5 Lakhs and the appeal is filed before 9.5.2005, by virtue of subsection (3) of Section 30 of the Gujarat Civil Courts Act, 2005, this Appeal is to be transferred to the concerned District Court for disposal in accordance with law.”

6. In view of above, the submission made by the learned advocate for the Appellant is required to be accepted as the value of the subject matter being less than Rs.5 Lakhs and the appeal is filed before 9.5.2005, by virtue of subsection (3) of Section 30 of the Gujarat Civil Courts Act, 2005, this Appeal is ordered to be transferred to the concerned District Court for disposal in accordance with law.

7. Accordingly, the Appeal is disposed of with an order to transfer the Appeal with all its accompaniments to the appropriate Court i.e. District Court, Bharuch.