

(1962) 08 GUJ CK 0003

In the Gujarat High Court

Case No : Civil Revision Application No. 1223 of 1960

Shah Shantilal Chunilal

APPELLANT

Vs

Shah Shantilal Fulchand and Another

RESPONDENT

Date of Decision : 30-08-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : AIR 1963 Guj 195 : (1963) GLR 698

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : N.R. Oza and B.S. Kapadia, for the Appellant; U.J. Desai, for the Respondent

Final Decision : Allowed

Judgement

V.B. Raju, J.—This is an application by the original plaintiff, who had filed Regular Civil Suit No. 94 of 1959 in the Court of Civil Judge (Junior Division) at Karjan for the recovery of Rs. 3700/- from two persons, who were attendants Nos. 1 and 2. In the suit defendant No. 2 was sought to be made liable because he was a member of a joint Hindu family consisting of defendants Nos. 1 and 2, although the promissory note was executed by defendant No. 1 alone.

2. The plaintiff then gave an application for amending the plaint in the following terms:

"In the alternative it is also prayed that both the defendants are the brothers and they have a joint undivided family and they have a joint family running cloth shop and that it is managed by the defendant No. 1. And for the business of the said shop the defendant No. 1 had purchased the cloth from the plaintiff and after settling the account thereof in the interest and benefit of the defendants" joint family, the defendant No. 1 as Manager of the defendants" joint family executed on 4th May, 1958 the promissory note for Rs. 3416/- in favour of the plaintiff. And on acknowledging the entire debt due to the plaintiff on the said

promissory note both the defendants settled at Rs. 2501/- on 8th March 1959 and executed the writing of instalments duly signed by both the defendants; and hence the defendant No. 2 is also liable to pay the suit claim -- and from the above fact it also appears that the defendant No. 2 has interest in the cloth shop, and hence even if there be any legal hitch in establishing the liability of the defendant No. 2, for the suit claim, the defendant No. 2 is also liable for the suit claim on account of their executing the agreement dated 2-3-1959 for Rs. 2501/- after acknowledging the debt of Rs. 3416/- due on the pro-tote dated 4th May 1958; and for that reason also the suit is filed against both the defendants to recover the suit amount."

3. This application was rejected and hence this revision application.

4. The learned counsel for the opponents contends that this revision application does not lie, because this is not a case decided, and he relies on *Mt. Suraj Pali Vs. Ariya Pretinidhi Sabha*, , which is a ruling of a Full Bench of the Allahabad High Court. On this point, as observed by the learned Judges of the Allahabad High Court, there was a conflict of opinion in the Allahabad High Court itself and there is a conflict of opinion between the Allahabad High Court and some other High Courts, namely, Calcutta and Madras High Court. Vide (1) *Sivaprasad Ram v. Tricomdas Coverji Bhoja* ILR Cal 926 : (AIR 1916 Cal 318) , (2) *Salam Chand Kannyram Vs. Bhagwan Das Chilhanian*, , (3) *Shri Krishna Dass v. Chandook Chand* ILR Mad 334 , and (4) *Kariya Goundan and Another Vs. Tirukkaivelu Chetty and Others*, .

5. The question whether the decision of a court on an interlocutory petition amounts to a case decided has been (sic) the conflict of conflict. The learned Judges of the Full Bench of the Allahabad High Court considered that the word "case" could not be given a wide meaning so as to cover an interlocutory order passed by a Court during the trial of the suit. But the Calcutta High Court and the Madras High Court are of the contrary view. In ILR Cal 926 : (AIR 1916 Cal 318), it was observed that the High Court can interfere with interlocutory orders when they might lead to failure of justice or irreparable injury. It was further observed as under :

"Even if it were doubtful whether Section 115 does empower us to interfere in a case of this kind, I think that our powers u/s 15 of the Charter Act are wide enough to enable us to do justice."

In *Salam Chand Kannyram Vs. Bhagwan Das Chilhanian*, Cuming J., on-served as under:

"To decide a case is to decide the whole case, and not to decide a part of the case. Therefore, s.. 115 of the CPC has no application to interlocutory orders."

and Page, J. observed thus:

"The High Court has jurisdiction u/s 115 of the CPC to revise interlocutory orders passed by subordinate Courts from which no appeal lies to the High Court."

In *Kariya Goundan and Another Vs. Tirukkaivelu Chetty and Others*, , it was held as under :

"The powers of amendment conferred on the Courts under the present law are much wider than formerly and all amendments should be allowed as would enable the Court finally to determine all matters in controversy between the parties. The High Court is entitled to set aside in revision an order of the lower Court refusing to grant amendment and to avoid the trouble, delay and expense that would otherwise be caused."

In ILR 32 Mad 334, it was held as under:

"The High Court will not, as a general rule, interfere by way of revision u/s 622 of the Code of Civil Procedure, when the party has a remedy elsewhere than in the High Court. The High Court will however interfere, where the right of the party is clear and where the result of non-interference will be only to multiply proceedings by driving the party to a suit, in which there can be no defence."

6. To decide this question was must refer to the relevant law. Section 115, Civil Procedure Code, reads as follows :

"The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears --

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit."

The words "case decided" have not been defined in the Civil Procedure Code. The word "case" is also not defined in the Civil Procedure Code. But the fact that the third clause of Section 115, C. P. Code refers to the powers of revision where the Subordinate Court acted in the exercise of its jurisdiction illegally or with material irregularity would show that the words "case decided" would include an order passed by a subordinate Court in the exercise of its jurisdiction and which is not the final order. It has been observed by their Lordships of the Supreme Court in *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, , as follows:

"Section 115, Civil P. C., empowers the High Court, in cases where no appeal lies, to satisfy itself on three matters : (a) that the order made by the subordinate Court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise its jurisdiction; (c) that in exercising the jurisdiction the Court has not acted illegally, that is, in breach of some provision of law or with material irregularity that is by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. AIR 1949 156 (Privy Council) . Therefore if an erroneous decision of a Subordinate Court resulted in its exercising jurisdiction not vested in it by law or failing to

exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of its jurisdiction the case for the exercise of powers of revision by the High Court is made out. In AIR 1949 239 (Privy Council) the subordinate Court gave an erroneous decision that the loan was a commercial loan and therefore refused to exercise jurisdiction vested in it by law and the Privy Council held that it was open to the High Court to interfere in revision u/s 115. Sir John Beaumont said at p. 142 (of Ind App) : (at p. 242 of AIR) :

There have been a very large number of decisions of Indian High Courts on Section 115 to many of which their lordships have been referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless, if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law or failing to exercise a jurisdiction so vested a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored. The cases of Babu Ram v. Munnalal, ILR All 454 : (AIR 1927 AC 358) and Hari Bhikaji v. Naro Visvanath, ILR Bom 432 may be mentioned as cases in which a subordinate-Court by its own erroneous decision (erroneous that is, in view of the High Court), in the one case on a point of limitation and in the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess; and the High Court held, wrongly their lordships-think, that it had no power to interfere in revision to prevent such a result. In the present case their Lordships-are of the opinion that the High Court, on the view which it took that the loan was not a commercial loan had power to interfere in revision under Sub-section (b) of Section 115.

In Keshardeo Chamria Vs. Radha Kissen Chamria and Others, , both these judgments of the Privy Council as also the previous judgments in Amir Hassan Khan v. Sheo Baksh Singh 11 IA 237 (PC) and Balkrishna Udayar v. Vasudeva Aiyar 44 I A 261 : (AIR 1917 PC 71), were reviewed and it was held that Section 115, C. P. Code, applies to matters of jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. Thus if a subordinate Court had jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the ultimate decision, then the High Court has no power to interfere. But if on the other hand it decides a jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested then the power of interference u/s 115, Civil P. C. becomes operative."

It is, therefore, clear that if a material irregularity is committed by the subordinate Court as regards some error of procedure in the course of the trial, that order can be revised and therefore an order of procedure also can be revised. This clearly shows that the words "case decided" include an order relating to some error of procedure. Moreover, Section. 107, Civil Procedure

Code, reads as follows :

"(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power --

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by , this Code on Courts of original jurisdiction in respect of suits instituted therein."

This applies to appeals from orders. It is, therefore, clear that when an order is passed which is appealable and which does not amount to a decree, a case is decided. I, therefore, agree with the view taken by the Calcutta and Madras High Courts that the order passed on an interlocutory application does amount to a case decided.

7. It is next contended that there is no material irregularity in the exercise of jurisdiction when an application for amendment is refused. As decided by their lordships of the Supreme Court, if there is an error of procedure in the course of trial which is a breach of some provision of law and the irregularity is material in that it may have affected the ultimate decision, then it would come within Section 115, C. P. Code.

8. Order 6, Rule 17, C. P. Code, provides as under : "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

If there is a breach of this provision of law, it would amount to an error in the exercise of jurisdiction. Of course, the question whether such an error is material or not would depend on the facts of each case. In the present case the liability of both the defendants was already alleged in the plaint. What is sought to be alleged by way of amendment is not any fresh liability of defendant No. 2 but a fresh ground or piece of evidence to show his liability for the original amount in the plaint, namely Rs. 3700/-. All that is sought to be relied by way of amendment is a document relating to an amount of Rs. 2501/-. By way of amendment a new piece of evidence is sought to be relied upon and not a new piece of liability. What is sought is defendant No. 2's liability for the full amount of Rs. 3700/-. The amount of liability is not sought to be reduced by the amendment. Such an amendment should, therefore, have been allowed. The amendment should have been allowed having regard to the original plaint and

the provisions in Order 6, Rule 17, C. P. Code, and it may be material because the claim for the whole liability of defendant No. 2 may be affected by not allowing the amendment

9. I, therefore, allow the revision application, set aside the order of the Court below and order that the amendment be allowed provided the applicant pays Rs. 200/- as costs to the opponents as a condition precedent to allowing this petition, The opponents are at liberty to raise the question of limitation regarding the document sought to have been executed. The opponents-defendants will be allowed to lead evidence. No order as to costs.