

(2002) 09 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Civil Revision Petition No"s. 195, 196, 200, 201, 206, 209, 212, 215 and 216 of 2002

Smt. Phool Kumari (since deceased) through L. Rs. and
Others etc.

APPELLANT

Vs

Nandu Ram etc.

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, Order 20 Rule 8, Order 41 Rule 31

Citation : AIR 2003 HP 75 : (2003) 1 ShimLC 284

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : G.D. Verma, Romesh Verma, K.D. Sood and Vinay Kuthiala, for the Appellant; Bhupender Gupta Neeraj Gupta, S.S. Mittal Prakash Thakur, Sunita Sharma, Ravinder Thakur, R.K. Gautam and J.R. Poswal, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—"Whether a judgment which has been pronounced in the open Court but has remained unsigned due to the death of the judicial Officer is a valid and binding judgment under the Code of Civil Procedure" is the common question of law which is involved in the present set of nine revision petitions taken up by this court in exercise of its suo motu powers u/s 115, CPC (for short the Code)

2. Civil suits No. 280/1 of 1999/96, 452/ 1 of 1999, 314/1 of 1999/96, 132/1 of 1999/92 and 376/1 of 1999/96 were decreed by the learned Sub Judge Ist Class, Kasauli at Solan, respectively on 6-10-2001, 24-9-2001, 10-10-2001, 12-9-2001 and 20-9-2001 while Civil Suits No. 54/1 of 2000/ 96, 91/1 of 1999/94, 565/1 of 1999/93 and 154/1 of 1999/98 were dismissed respectively on 22-8-2001, 16-10-2001, 28-7-2001 and 29-9-2001.

3. The learned Sub Judge, namely, Shri Piar Chand Chauhan, who recorded the judgments in all the above mentioned cases and had pronounced them in open

Court on respective dates, died on 20-11-2001. The judgments in all the above noted cases could not be signed by him either for the reason of late transcription of the judgments or for some other reason.

4. When the matter was brought to the notice of this court on the administrative side by the successor in office of the deceased Judicial Officer, the records of all the cases were summoned and ordered to be taken up on the judicial side in exercise of the suo motu revisional jurisdiction u/s 115 of the Code in order to examine the question as to the effect of the judgment recorded, delivered/ pronounced by a subordinate Judge which has remained unsigned due to the death of such subordinate Judge.

5. Notice were issued to the parties, parties and/or their counsel were heard.

6. Order 20 of the Code, Insofar as it is relevant for the purpose of the question involved in the present cases, reads :--

"1. Judgment when pronounced.--(1) The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders;

Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the court on each issue and the final order passed in the case are read out and it shall not be necessary for the court to read out the whole judgment.

(3) the judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf :

Provided that, where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the Judge, bear the date on which it was pronounced, and form a part of the record.

2. Power to pronounce judgment written by Judge's predecessor.--A Judge shall pronounce a judgment written, but not pronounced, by his predecessor.

3. Judgment to be signed.--The Judgment shall be dated and signed by the Judge in open court at the time of pronouncing it, and, when once signed, shall not

afterwards be altered or added to, save as provided by Section 152 or on review.

4. to 7 -----

8. Procedure where Judge has vacated office before signing decree.--Where a Judge has vacated office after pronouncing judgment, but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such court was subordinate.

9. to 20. -----

7. In "A Treatise on the Law of Judgments" (second edition), Henry Campbell Black, the author of Black's Law Dictionary, said thus:

"The rendition of a judgment is the judicial act of the Court in pronouncing the sentence of law upon facts in controversy as ascertained by the pleadings and the verdict. The entry of a judgment is a ministerial act, which consists, in spreading upon the record, a statement of the final conclusion reached by the Court in the matter, thus furnishing external and incontestable evidence of the sentence given, and designed to stand as a perpetual memorial of its action. It is the former, therefore, that is the effective result of litigation. And not only entered at all, still it is none the less a judgment."

8. Referring to the requirement as to the signature of the Judge in the judgment, the learned author has said:--

The impression not uncommonly prevails that at the common law a judgment required the signature of the Court in order to be valid. This notion--arising probably from the ambiguous use of the phrase signing judgment--is erroneous and the ancient practice furnishes but slight aid in determining the same question in modern law."

9. There has been divergent opinions of the High Courts on the question whether unsigned pronounced judgment is a valid and binding judgment or not.

10. In Beni Madho Prasad Singh v. Adit, AIR 1953 Allahabad 416, interpreting the provisions contained in Rule 3, Order 20 of the Code, it was held by a Division Bench that a judgment to become final must be signed and dated at the time of its pronouncement and till the judgment pronounced or dictated in the open court is signed and dated, the case cannot be said to have been legally disposed of.

11. In Sangam Lal v. Rent Control and Eviction Officer, Allahabad AIR 1966 Allahabad 221, the question for consideration before the Full Bench of the Allahabad High Court was :--

"Whether after a judgment has been orally dictated/pronounced in open court but before it is signed and sealed, it can be completely changed?"

12. After holding a judgment pronounced but not signed to be a valid judgment,

the above question was answered in the following terms :--

"A judgment which has been orally dictated in open Court can be completely changed before it is signed and sealed provided notice is given to all the parties concerned and they are heard before the change is made."

13. A Division Bench of Patna High Court in *Anant Prasad Singh v. The State of Bihar*, 1978 Lab IC 1500, while considering the provisions contained in Rule 3 of Order 20 of the Code, has held that a judgment becomes final only when it is pronounced and signed. So long as these steps are not complete, it is open to modification. .

14. A learned single Judge of this court in *Ramji Dass v. Inder* (I.L.R. 1975 HP 543) while considering the scope and ambit of Order 20, Rules 1 and 3, and Order 43, Rule 31 of the Code held that the act of the Judge in signing and dating the judgment is regarded by law as an act perfecting the judgment. Both Order 20, Rule 3; Order 41, Rule 31 of the Code require the Judge to sign and date the judgment on pronouncement in open court. The requirement is not mere formality. It is an act which makes the judgment complete. It was further held that so long as a judgment is not perfected by signing it, it would appear that it can always be withdrawn or altered or modified. Until perfected it is not a final judgment.

15. In *High Court on its own motion Vs. Sunder Singh and Others*, dealing with a situation like the one involved in the present case, where the judgment in civil appeal could not be signed by the Additional District Judge before his death, following the ratio laid down in *Ramji Dass v. Inder and Anr.* (supra), the unsigned judgment available on record (though shown to have been pronounced by the appellate Judge before his death) was held to be a mere draft judgment to which no finality was attached. It was reiterated that signing of the judgment was not a mere formality. It is an act which makes the judgment perfect and complete. Mere pronouncement of the judgment had not the effect of converting the draft judgment into the judgment of the court to which finality was attached.

16. To the similar effect it was held by a learned single Judge of this court in *N.K. Vyas v. Mehar Chand* 1985 (2) RCJ 615.

17. The High Court of Kerala also in *Devassy Manjooran v. Registrar, University of Kerala* 1975 K.L.T. 348, has held that by the terms contained in the rules contained in Order 20 of the Code, a Judgment will become final only when it is signed. It is the signature in the judgment that makes the judgment inviolable and unalterable and as long as the judgment has not be signed it is certainly possible for the Judges who heard the case to have the question re-examined and express their final conclusion in the judgment.

18. A contrary view has been taken by the High Courts of Andhra Pradesh, Rajasthan, Punjab & Haryana, and Bombay.

19. The High Court of Andhra Pradesh in *Puvvada Narasimhamurthy Vs. Gadi Satyavathi and Others*, has held that under the Code of Civil Procedure, stress is laid upon the pronouncement or delivery of the judgment as a judicial act, which has got the legal effect. In other words, when a judgment stands pronounced the same is valid and binding even if the same has remained unsigned. The same view was reiterated in *Belgees Begum Vs. Govt. of Andhra Pradesh and others*,

20. In *Smt. Basanti Devi and Others Vs. Abdul Sattar and Others*, where the Judgment had been dictated in open court in the presence of the parties and the Judge unfortunately had died before signing the transcript, it was held that the act of signing the transcript, dating and sealing it were mere formalities the non compliance of which was not fatal. Judgment pronounced becomes operative Immediately on pronouncement.

21. A Division Bench of Punjab and Haryana High Court in *Krishan Kumar v. Financial Commissioner, Taxation, Punjab* (1984 (2) RCJ 521), has held that decision having been announced after hearing the parties and in open Court will be an operative Judgment, though the judgment recorded in pursuance thereof is not signed by the Presiding Officer concerned.

22. Similar is the view of the Bombay High Court in *Darayas Cawasji Balsara Vs. Shenaz Darayas Balsara*, and in *Hakikullah Haji Rahimutullah and Others Vs. The Maharashtra Housing and Area Development Authority and Others*, The Bombay High Court has gone to the extent of holding that such judgment can be and must be signed by the successor in office.

23. The controversy has now been set at rest by the Hon''ble Supreme Court in *Vinod Kumar Singh Vs. Banaras Hindu University and Others*, In the said case, a writ petition pertaining to admission to the Master's Course in Law for the academic year 1983-84 was heard by a Division Bench of the Allahabad High Court. After the conclusion of the hearing, the learned Judges constituting the Bench, dictated a judgment in the open Court allowing the writ petition directing the University to admit the writ petitioner. The writ petitioner, thereafter applied for a copy of the judgment. He was informed that the matter had again been posted for hearing and would be heard afresh. Though initially the case was listed for rehearing before the same Bench which rendered the judgment, however, by an order of the same Division Bench, it was posted for hearing before another Division Bench. The other Division Bench, before which the matter came up for hearing, dismissed the writ petition. In the appeal before the Hon''ble Supreme Court the writ petitioner questioned the judgment of the second Division Bench on the ground that judgment once pronounced in open Court by the first Division Bench became operative even without signature of the learned Judges and cannot be altered thereafter and the judgment of the second Division Bench was unsustainable. The Hon''ble Supreme Court allowed the appeal, set aside the judgment of the second Division Bench and held that judgment of the first Division Bench, which was dictated in open Court to the Court Master, though not signed, was a valid and effective judgment Referring

exhaustively to the observations made in *Surendra Singh and Others Vs. The State of Uttar Pradesh*, it was held :--

"When a judgment is pronounced in open court, parties act on the basis that it is the judgment of the court and that signing is a formality to follow."

24. It was further observed that judgment to be operative does not await signing thereof by the court.

25. In *Surendra Singh v. State of Uttar Pradesh* (supra), the Hon"ble Supreme Court was dealing with the effect of an impugned judgment in a criminal case. In the said case a Division Bench of Lucknow Bench of the Allahabad High Court consisting of Kidwai and Bhargava, JJ. heard the criminal appeal on 11-12-1952 and reserved the judgment. Before the Judgment could be delivered Bhargava, J. was shifted to Allahabad from Lucknow. While at Allahabad, Bhargava, J. dictated a judgment signed every page thereof as well as at the end and sent it to Kidwai, J. at Lucknow. On 24-12-1952 before the Judgment was delivered, Bhargava, J. died. The judgment was delivered by Kidwai, J. at Lucknow on 5-1-1953 signed it and put the date as well. A question arose--Whether the judgment was valid since by the time it was delivered Bhargava, J. had died. It was not a case where the judgment was pronounced in open court. While considering the question, the Hon"ble Supreme Court held :

"In our opinion, a judgment within the meaning of these sections is the final decisions of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there : that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the Judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

An important point therefore, arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But, however, it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act

which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however, heavily and often they may have been signed. The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of *locus paententiae* and indeed last minute alterations often do occur. Therefore, however, much a draft judgment may have been signed before hand, it is nothing but a draft till formally delivered as the judgment of the court. Only then does it crystallise into a full-fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in Court but he must be in existence as a member of the court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he Intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery."

26. The Hon"ble court further went on to hold that as soon as the judgment is delivered, that becomes operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain, the rules regarding which may differ but they do not form the essence of the matter and if there is irregularity in carrying them out, it is curable.

27. Pointing out the distinction between judgments which have not been delivered and so have not become operative and those which have been delivered and become operative, the Hon"ble Supreme Court observed as under :--

"After the judgment has been delivered provision is made for review. One provision is that it can be freely altered or amended or even changed completely without further formality except notice to the parties and a rehearing on the point of change should that be necessary, provided it has not been signed. Another is that after signature a review properly so-called would lie in civil cases but none in criminal; but the review, when it lies, is only permitted on very narrow grounds. But in this case the mere fact that a Judge is dead and so cannot review his judgment does not affect the validity of the judgment which has already been delivered and has become effective. For this reason, there is a distinction between judgments which have not been delivered and so have not become operative and those which have. In the former case, the alteration is out of Court. It is not a judicial act. It is only part of a process of reaching a final

conclusion; also there is no formal public declaration of the Judges mind in open court and consequently there is no "judgment" which can be acted upon. But after delivery the alteration cannot be made without notice to the parties and the proceedings must take place in open court, and if there is no alteration there is something which is final and conclusive and which can at once be acted upon. The difference is this. In the one case, one cannot know, and it would be against public policy to enquire, whether the draft of a judgment is the final conclusion of the Judge or is only a tentative opinion subject to alteration and change. In the second case, the Judge has publicly declared his mind and cannot, therefore, change it without notice to the parties and without hearing them afresh when that is necessary; and if there is no change the judgment continues in force. By change we mean an alteration of the decision and not merely the addition or subtraction of part of the reasoning."

28. In view of the law laid down by the Hon'ble Supreme Court, it is held that the judgments delivered/pronounced by the deceased Subordinate Judge, which have remained unsigned, are valid, effective and operative as any other effective judgment signed by a Judge.

29. In order to lend authenticity to the unsigned judgments, it is directed as under :--

(a) The successor Judicial Officer shall put his initials on each of the pages of the judgment and get the Court seal affixed on each of such page of the judgments;

(b) He shall record a certificate on the last page of the judgment under his signatures and date line of the date recording the certificate in the following terms :

"certified that the above judgment was dictated and pronounced in open Court by Shri Piar Chand Chauhan, Sub Judge Ist Class, (since dead) on --"

(c) The decree sheets in terms of the judgments shall be got prepared and shall be signed by the successor in office as provided for under Rule 8, Order 20 of the Code;

(d) Other zimni orders, documents and proceedings, which have remained unsigned, shall be signed by the successor in office for the purpose of procedural compliance to enable the completion of records for the purpose of consignment in the record room.

30. The carrying out of the above directions will apart from ensuring authenticity to the unsigned judgments, would also facilitate the grant of certified copies" to the parties either for the purpose of record or for the purpose of appeal/revision.

31. All the above revision petitions stand disposed of in the abovesaid terms.