

(1961) 10 GUJ CK 0013
In the Gujarat High Court

Surrottambhai Purshottambhai Hathising	APPELLANT
Vs	
Ravichand Umedchand	RESPONDENT

Date of Decision : 25-10-1961

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 1, Order 19 Rule 1, Order 19 Rule 2, Order 19 Rule 2

Citation : (1962) 3 GLR 1013

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

Bench : Single Bench

Judgement

V.B. Raju, J.—This application is directed against the judgment and order of the District Judge"" of Ahmedabad who, in revision application

No. 7 of 1957 before him against the order of the Small Cause Court Judge, fixing the standard rent of the premises in question held that the

decision of the Small Cause Court Judge based as it was on affidavits was not in accordance with law and therefore remanded the matter to the

trial Court for disposal according to law. It is an admitted fact that both the parties produced affidavits and did not produce any oral evidence.

They also produced documents. The trial Court fixed the standard rent after considering the affidavits and the documents produced by both the

sides. The learned District Judge observed as follows:

I must confess that I am unable to understand how the Judge could decide as to whether he should believe one affidavit or other. He had not the

opportunity of seeing any one in the witness-box and when he believes a particular affidavit or disbelieves another affidavit his decision would not

be a judicial decision but would be almost arbitrary In cases where the law does

not provide for an appeal and where the trial Court is the final Court on points of fact it would not ordinarily be proper to decide matters on affidavit especially when in these cases of this type the decision would fix the rights of the parties for all times to come.

The learned District Judge then proceeded to observe that after considering the affidavits regarding the value of the land the trial Judge came to an arbitrary decision as the Judge could not have seen the demeanour of the persons who had given the affidavits. The learned Judge has observed

that if the matter is decided on mere affidavits the other party gets no opportunity to cross-examine the persons filing the affidavits and therefore the

Judge thought that the decision of the trial Judge based as it was on affidavits was not in accordance with law. In revision this order of the District

Judge is challenged and it is contended that the learned Judge lost sight of the provisions of Order 19 Rule 1 and Order 19 Rule 2 Civil Procedure

Code. These two provisions read as follows:

Order 19 Rule 1:

Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read at the hearing on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination and that such

witness can be produced an order shall not be made authorising the evidence of such witness to be given by affidavit.

Order 19 Rule 2:

(1) Upon any application evidence may be given by affidavit but the Court may at the instance of either party order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.

A perusal of the rojnama shows that written-statement was filed on 8 and the matter was then adjourned to 7-12-1955 for affidavits. On that day

both sides gave applications stating that their affidavits were not ready and asking for time to produce their affidavits. On 3-2-1956 the applicant

applied for witness summons and on 24-2-1956 one witness of the applicant

came to the Court produced certain documents and gave his affidavit. A similar thing happened on 16-3-1956. These entries in the rojnama clearly show that the Court had decided to decide the matter on affidavits alone and had decided to order that all the facts should be proved by affidavits. Under Order 19 Rule 1 not merely one fact but several facts could be ordered to be proved by affidavit. It is also clear from the applications given by both the sides that they had asked for time to produce evidence in the form of affidavits. The case would also fall under Order 19 Rule 2. In fact it was not the contention before the learned District Judge that the Small Cause Court Judge had not passed an order that evidence should be led in the form of affidavits. The main ground on which the learned District Judge felt that the order of the Small Cause Court Judge was not in accordance with law was that the trial Court Judge had not good grounds for preferring one set of affidavits to another set of affidavits as the Judge could not see the demeanour of the witnesses. His observation that the parties had no opportunity to cross-examine the witnesses is not correct because under Order 19 Rule 2 CPC the Court may at the instance of either party order the attendance for cross-examination of the deponent. No such request was made by either party. In fact it is not the ground of the learned District Judge for holding that the order was not in accordance with law that the Small Cause Court Judge followed the wrong procedure in allowing facts to be proved by affidavits. His ground for holding that the order was not in accordance with law was that when there was no evidence except affidavits and documents it was not possible to prefer the evidence adduced by one party to the evidence adduced by another party. u/s 29 of the Bombay Rents Hotel and Lodging House Rates (Control) Act 1947 a revision lies against the decision of the Small Cause Court Judge fixing the standard rent provided the decision was not in accordance with law. When the CPC allows facts to be proved by affidavits and when in accordance with the provisions contained in Order 19 facts have been proved by affidavits it was not correct on the part of the learned District Judge to say that the decision of the learned trial Judge was not in accordance with law merely on the ground that the evidence was in the form of affidavits. It was open to him to hold that the decision was not in accordance with law in any of the manners

contemplated u/s 29 of the Rent Act. The learned District Judge has therefore exercised his jurisdiction illegally in holding that the decision was not in accordance with law. He has not given any other reason for holding that the decision of the Small Cause Court Judge was not in accordance with law.

2. It is however contended that what the learned District Judge did was only to order a remand and that an order of remand is not revisable u/s

115 of the Civil Procedure Code. Section 115 CPC 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

(b) 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 authorities on the interpretation of the words case decided are numerous and some of them are conflicting. But there cannot be any doubt that

the expression case decided does not mean a suit decided. A case may include a suit or an appeal or an application. In the instance case, the

revision application before the District Judge u/s 29 of the Rent Act was numbered as Revision Application No. 7 of 1957 from the order in

Miscellaneous Application No. 573 of 1955 of the Court of Small Cause Judge Ahmedabad. The matter before the District Judge was therefore a

case and that case was decided the revision application was allowed and the order of the Small Cause Court Judge was set aside. In addition to

setting aside the order of the Small Cause Court Judge the learned District Judge ordered a remand and further trial of the matter. There cannot be

any doubt that in these circumstances the learned District Judge decided the case before him viz. Revision Application No. 7 of 1957. A Similar

view was taken in the appeal in the case of Motibhai Jeshingbhai Patel v. Ranchhodbhai Shambhubhai Patel and Anr. ILR Bom 430. In that case

an appellate Court set aside the decree of the trial Court and remanded the suit to the trial Court for fresh hearing. It was held that the order of the

appellate Court could be revised u/s 115 CPC and the Revision Application u/s 115 before the High Court was allowed and the order of the

appellate Court set aside. The matter was remanded to the lower appellate Court for deciding the appeal on merits. The learned Counsel for the

applicant however relies on Chimanbhai Kalyanbhai and Anr. v. Keshavlal Bulakhidas and Ors. ILR Bom 721 where it was held that no

application lies u/s 115 CPC against an order passed setting aside an award made in a reference to arbitration in the course of a suit. A suit for

partition was referred to an arbitration under an order of the Court. The award was made and filed in the Court but it was set aside by the Court

on the ground that one of the parties was a minor and leave of the Court was not obtained before the reference. The suit was ordered to be tried

on merits. It was therefore a case of an order for trial of the suit passed by the trial Court itself. The matter before the trial Court was a suit and

that suit was not decided by the trial Court which merely set aside the award and ordered the suit to be tried. The facts of this case are therefore

distinguishable. The learned Counsel also relied on Thakoredas Tribhovandas v. Lallubhai Tribhovandas 25 Bom LR 452 . The facts of that case

are briefly as follows The plaintiffs impugned an award of the arbitrator which was made without the intervention of the Court and the trial Court

passed a decree in terms of the award. In appeal the District Judge held that the award was vitiated and accordingly he directed that the decree

and the order should be set aside and the suit remanded for trial. The learned Judges of the High Court held that the District Judge had jurisdiction

to go into the question whether the award was vitiated. They rejected the contention urged in support of the revision application that the District

Judge had acted without jurisdiction in going into the misconduct of the arbitrator. On this ground alone the learned Judges could have dismissed

the application but they observed that on another ground also they refused to entertain the application and that was that the case had not been

decided. They observed that all that the Court found was that there had been no lawful agreement or compromise of the suit and therefore a trial of

the suit was directed. The main ground on which they dismissed the application was that the District Judge was within his jurisdiction and acted

lawfully in his jurisdiction and therefore the second ground urged would be obiter. The learned Counsel for the applicant also relied on AIR 1942

334 (Oudh) holding that when in an appeal the appellate Court orders remand it does not decide a case. But it is difficult to agree with this view

because an appeal is a case and when the appeal is decided and the order of the trial Court is set aside and the matter is remanded the appeal is

fully decided. I reject the contention of the learned Counsel that the present case is not an instance of a case decided. I therefore allow the

application set aside the order of the District Court remanding the matter to the trial Court and order that the District Court should decide the

revision before it viz. Civil Revision Application No. 7 of 1957 in accordance with law. No order as to costs.