

Ramesh Chander v. Bhushan Lal (S. S. Sodhi, J.)

held that after the loan was refinanced by the I.D.B.I., the appellant was entitled to charge interest at the rate of $9\frac{1}{2}$ per cent if the respondents paid the instalments in time and at the rate of $12\frac{1}{2}$ per cent if they made default in doing so. Therefore, the appellant is entitled to charge interest at the rate of $12\frac{1}{2}$ per cent on the refinanced amount after the respondents committed default in paying the instalments. However, the trial Court has erroneously held that after the increase in the bank rate, the Corporation is entitled to charge interest at the rate of $13\frac{1}{2}$ per cent on the refinanced loan. There is no clause in the mortgage deed which supports the above conclusion. The increase in the bank rate affected the rate of interest on the loan if it was not refinanced by the I.D.B.I. or the refinanced loan was returned by the appellant to the I.D.B.I. Consequently, I am of the opinion that the appellant is not entitled to charge interest at the rate of $13\frac{1}{2}$ per cent and the finding of the learned trial Court is liable to be set aside to this extent.

(15) For the aforesaid reasons, I partly accept the appeal and hold that the appellant is entitled to incidental charges and miscellaneous expenses. I also partly accept the cross-objections and hold that the appellant is not entitled to charge interest at the rate of $13\frac{1}{2}$ per cent on the refinanced loan, as indicated above. In view of the circumstances of the case, I leave the parties to bear their own costs.

H.S.B.

Before S. S. Sodhi, J.

RAMESH CHANDER,—Petitioner.

versus

BHUSHAN LAL,—Respondent.

Civil Revision No. 1005 of 1984.

May 8, 1984.

Code of Civil Procedure (V of 1908)—Section 21(2)—Suit triable by a Subordinate Judge 1st Class—Evidence recorded therein by a Subordinate Judge 2nd Class—Such evidence—Whether could be treated as a nullity—Denovo recording of the evidence—Whether necessary.

Held, that in order that an objection regarding the pecuniary jurisdiction of a Court may be entertained by an appellate or revisional Court, the fulfilment of the three conditions is essential namely (1) the objection was taken in the Court of first instance, (2) it was taken at the earliest possible opportunity and in cases where issues are settled at or before such settlement and (3) there has been a consequent failure of justice. The case remained pending in the Court of Sub Judge II Class for some time and both the parties examined witnesses and adduced evidence without any reservation and it was only on the conclusion of the evidence, that objection to the evidence already recorded was sought to be taken. This was by no means the earliest opportunity for raising the objection and what is more, there is no failure of justice caused by the recording of evidence by the Subordinate Judge II Class. Thus, if in a suit triable by a Subordinate Judge Ist Class, the evidence is recorded by a Subordinate Judge II Class, no occasion for imputing any inherent lack of jurisdiction arises and the evidence so recorded could not be treated as a nullity necessitating *denovo* recording thereof.

(Paras 5, 8 & 9).

Petition under Section 115 C.P.C. for revision of the order of Sh. M. P. Mehndiratta, HCS, Sub Judge Ist Class, Hansi, dated 14th March, 1984 ordering that the defendant at this stage cannot raise objection that the evidence recorded in the court of Sub-Judge IInd Class and adjourning the case for 22nd March, 1984 for final arguments in the case.

CIVIL MISC. NO. 1812-CII/84.

Application U/s 151 CPC praying that this Hon'ble Court be pleased to stay further proceedings in the Court of Sub Judge Ist Class till final disposal of the revision petition.

D. S. Bali, Advocate,— *for the Petitioner.*

H. L. Sarin, Senior Advocate, with M. L. Sarin, Advocate,—*for the Respondent.*

JUDGMENT

(1) In a suit triable by a Subordinate Judge, 1st Class, is evidence recorded therein by a Subordinate Judge II Class to be treated as a nullity necessitating *denovo* recording thereof? Herein lies the controversy raised.

(2) The suit here was instituted in the Competent Court, that is, the Court of Subordinate Judge, 1st Class on August 19, 1981, and

Ramesh Chander v. Bhushan Lal (S. S. Sodhi, J.)

issues were framed on December 12, 1981, but in June, 1982, before any evidence had been recorded, the case was transferred to the Court of Subordinate Judge II Class. All the evidence in the suit was thereafter recorded in this Court. Evidence concluded on January 31, 1984. It was then discovered that having regard to its pecuniary value, the suit was triable by Subordinate Judge, 1st Class. The file was consequently sent to the District Judge, who transferred it to the Court of the Subordinate Judge, 1st Class.

(3) Before the Subordinate Judge, 1st Class denovo recording of evidence was sought on the ground that the evidence on record had been so taken by a Court having no jurisdiction and it could not, therefore, be looked into. This was declined by the trial Court and it is this order which is now challenged.

(4) In dealing with the objection to the pecuniary jurisdiction of the Court, the provisions of Sub-section (2) of Section 21 of the Code of Civil Procedure must be taken note of, which read as under :—

S. 21(2) "No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

(5) In *Koopilan Uneen's daughter Pathumma and others v. Kooilan Unseen's Kuntalan Kutty dead by LRs and others* (1), the Court had occasion to consider similar provisions as contained in Section 21(2) of the Code of Civil Procedure relating to objections to the territorial jurisdiction of the Court. It was observed, "in order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential :—

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled at or before such settlement.
- (3) There has been a consequent failure of justice.

All these three conditions must co-exist."

(1) A.I.R. 1981 S.C. 1683.

(6) Mr. D. S. Bali, counsel for the petitioner sought to draw a distinction here between lack of territorial jurisdiction and lack of pecuniary jurisdiction. The argument being that while objections to the former can be waived, in the case of the latter it goes to the very root, that is, the competence of the Court and cannot, therefore, be defeated by any act or omission of any party to the suit. Support here was sought from the judgment of the Supreme Court in **Hira Lal Patni v. Sri Kali Nath** (2), wherein dealing with an objection to the territorial jurisdiction of the Court, it was observed, "it is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like S. 21 of the Code of Civil Procedure".

(7) In reading this passage it would be pertinent to note that "inherent lack of jurisdiction" was spelt out to mean that "the Court could not have seized of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the Court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

(8) Considered in this light, in the context also of the provisions of Section 21(2) of the Code of Civil Procedure, no occasion for imputing any inherent lack of jurisdiction arises here.

(9) It will be seen that the case remained pending in the Court of Subordinate Judge, II Class for over a year and a half. Both the parties examined witnesses and adduced evidence without any reservation. It was only on the conclusion of the evidence, that objection to the evidence already recorded was sought to be taken. This was by no means the earliest opportunity that the petitioner had of raising it and what is more, counsel for the petitioner could point to no failure of justice caused by the recording of evidence by the Subordinate Judge, II Class.

(2) A.I.R. 1962 S.C. 199.

Parmeshri v. Naurata (R. N. Mittal, J.)

(10) The impugned order thus warrants no interference in Revision which is consequently hereby dismissed with costs. Counsel's fee Rs. 300.

N.K.S.

Before R. N. Mittal, J.

PARMESHRI,—Appellant.

versus

NAURATA,—Respondent.

Civil Misc. No. 2819-C of 1983. ...

R.S.A. 1951 of 1971

May 10, 1984.

Code of Civil Procedure (V of 1908)—Section 148—Conditional decree for possession on payment of certain amount passed—Time within which the amount to be paid specified therein—Court—Whether entitled to extend time under section 148.

Held, that from a reading of section 148 of the Code of Civil Procedure, 1908 it is evident that the Court has power to extend time for doing such acts which are prescribed or allowed by the Code. In other words, it applies to procedural orders and not to conditional decrees. In the case of conditional decrees, the Court cannot extend time though in other cases it can do so. It is, therefore, held that in the case of conditional decree for possession on payment of some amount by a party within specified time, the Court is not entitled to extend time for payment under section 148 of the Code for sufficient cause, if the amount is not deposited within the specified time.

(Paras 5 and 6).

Application under Section 148 read with Section 151 C.P.C. on behalf of respondent praying that this Hon'ble Court may extend the time for payment of 3rd instalment upto 25th October, 1983 or till the amount is accepted by the plaintiff/appellant under the orders of this Hon'ble Court.

Rajesh Chawdhary, Advocate, for the applicant Respondent.

J. K. Sharma, Advocate, with I. S. Saini, Advocate, for the Appellant.