

Ruldu Ram and
others
v.
The Divisional
Superintendent,
Northern Rail-
way, Ferozepore
Cantt.

Grover, J.

In the result it must be held that the questions which arise in this matter fall within the jurisdiction of the authority constituted under the Payment of Wages Act and the reduction in wages in the circumstances mentioned before falls within the words "deduction in wages".

This petition will now be placed before a learned Single Judge for disposal in accordance with law.

B.R.T.

REVISIONAL CIVIL

Before Tek Chand, J.

JOWALA SINGH AND OTHERS,—*Defendants-Petitioners.*

versus

MALKAN NASIRPUR AND OTHERS,—*Respondents.*

Civil Revision No. 426 of 1957.

1957
Nov. 25th

Code of Civil Procedure (V of 1908)—Order 22 Rule 11 read with section 141—Whether applies to revisions—Maxim inclusio unius est exclusio alterius—Whether applies—Indian Limitation Act (IX of 1908)—Article 176—Applicability of.

Held, that ordinarily the provisions of Order 22, Civil Procedure Code, govern the case of abatement during the pendency of the suit. This principle has been extended expressly by rule 11 of Order 22 to the case of appeals but there is no mention of its applicability to revisions. This is a case in which the maxim *inclusio unius est exclusio alterius* should apply and by restricting the application of the rule of abatement expressly to suits and appeals, the intention of the legislature was to exclude from its purview cases arising from proceedings in revision. Article 176, Limitation Act, which provides a period of limitation for making the legal representatives a party, refers to legal representatives "of a deceased plaintiff or of a deceased appellant". The provisions of section 141 of the Code of Civil Procedure also cannot be read in cases of abatements under Order 22, so as to extend its scope to revisions.

Case law discussed.

Petition under section 115, Civil Procedure Code for revision of the order of Sh. S. C. Jain, Sub-Judge, II Class, Sultanpur, dated the 26th July, 1957, accepting the application of Malkan Nasirpur.

I. S. KARWAL and KULDIP SINGH, for Petitioners.

TIRATH SINGH, for Respondents.

JUDGMENT

TEK CHAND, J.—This civil revision presented by the defendants-petitioners arises out of the following facts:— Tek Chand, J.

The plaintiffs, who are the proprietors in village Nasirpur, instituted a suit on the 22nd of February, 1951, for a declaration that the defendants, who are their occupancy tenants, should not be declared owners of the land in view of the provisions of the Pepsu Abolition of Occupancy Tenures and Settlement of Land Disputes Ordinance, 2006 Bk., and for injunction that the plaintiffs should not be prohibited from enjoying their right of easment on the land. This suit was dismissed by the Subordinate Judge, Sultanpur, on the 27th of November, 1951, on the ground that the civil Courts had no jurisdiction. The plaintiffs then presented an appeal to the District Judge, Kapurthala, who agreed with the findings of the trial Court and dismissed the appeal. A revision petition was then presented to the Pepsu High Court, which on the merger of Pepsu and Punjab was disposed of by this Court on the 15th of February, 1957. It was held that the civil Courts had jurisdiction, the revision was accepted and the case remanded to the trial Court for disposal according to law. Isher Singh, one of the defendants, had died in 1955 but this fact was not

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brought to the notice of this Court when the revision petition was argued. On remand, it was contended before the trial Court that there had been an abatement of the revision petition, as the limitation had long expired, and the deceased having died almost two years ago. On the other side, it was argued that there could be no abatement of a revision, as order 22, Civil Procedure Code, did not apply to revisions and rule 11 of Order 22 extended its applicability to appeals only. The trial Court followed *Mohd. Saddat Ali Khan v. The Administrator, Corporation of City of Lahore* (1), and *Manickam and others v. M. R. R. M. Ramanathan Chettiar and others* (2), upholding the view, that there is no question of abatement in case of a revision. The trial Court was also of the view that the application for setting aside abatement lies only in the Court in which the proceedings were pending, at the time the abatement took place, and this should have been done in the High Court during the pendency of the revision and not in the trial Court. He has also held, that in fact, there was no question of abatement. He allowed Amar Singh, son of deceased Isher Singh, to be added a defendant as representing his deceased father. He then proceeded to frame the issues; and evidence in this case has not been recorded so far. Against the above order, the defendants have submitted this petition of revision.

S. Kuldip Singh, the learned counsel for the petitioners, maintains that the provisions of Order 22, Civil Procedure Code, apply to revisions as well as to appeals. He has drawn my attention to *Ajudhia Pershad Ram Pershad v. Sham Sunder and others* (3). In that case, Cornelius, J., was of

(1) A.I.R. 1949 Lah. 186 (F.B.)

(2) A.I.R. 1949 Mad. 435

(3) A.I.R. 1947 Lah. 13 (F.B.)

the view that the principle of abatement was applicable not only to suits and appeals but also to proceedings in revision. Din Mohammad, J., thought that this question was debatable and he declined to express any opinion, especially as it was not necessary for its disposal. The third Judge, Ram Lall, J., agreed with Din Mohammad, J. This authority is, therefore, of no assistance to the petitioner. Moreover, in *Mohd Saddat Ali Khan v. The Administrator, Corporation of City of Lahore* (1), a view contrary to that upheld by Cornelius, J., in *Ajudhia Pershad's case* (2), was expressed by the Full Bench. It was held that Order 22, rule 3, of the Code of Civil Procedure, was not applicable to revisions and those provisions could not be read in conjunction with section 141, Civil Procedure Code, because section 141 was so drafted as to enable a Court to apply the procedure in regard to suits to such proceedings as were in *pari materia* with suits, and thus original in character. It was held that a revision was very much unlike a suit. It was also observed that Article 176, Limitation Act, could not be stretched in order to apply to a revision. Therefore, where death took place of a party pending the revision petition, and no application was made by the legal representatives of the deceased to be brought on record, after the expiry of the period of ninety day, the petition for revision could not be dismissed on the ground of abatement. The case law was reviewed and Cornelius, J., who was also a member of the Full Bench, agreed with Abdur Rahman, Acting C.J.,

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This question has been examined by different High Courts in India. In *Hafasji Ibrahim and others v. Mangalgirji Mathuragirji* (3), it was

(1) A.I.R. 1949 Lah. 186 (F.B.)
(2) A.I.R. 1947 Lah. 13 (F.B.)
(3) A.I.R. 1940 Bom. 201

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held by Chagla, J., that where an applicant to the revisional application to the Collector died during the pendency of the revision, his legal representatives could be brought on record even after one month from the death of the applicant, as the provisions of Order 22 did not apply to revisional proceedings before the Collector. Neither Article 176 of the Indian Limitation Act, applied to parties to the revision nor could the scope of section 141, Civil Procedure Code, be extended so as to cover the case of revisions. Support for this view is also found in *Nawab Syed Kazim Husain v. Seth Pearey Lal* (1), *Manickam v. Ramanathan Chettiar* (2), and *Babulal and another v. Mannilal* (3).

My attention has also been drawn to an authority of a Single Judge of Madhya Bharat in *Chakrapani Lalprasad v. Biharilal Mahabir and another* (4), who dissented from the view expressed in *Mohd Saddat Ali Khan v. The Administrator Corporation of City of Lahore* (5), and *Manickam and others v. M. R. R. M. Ramanathan Chettiar and others* (6), and held that where any of the parties to a revision dies, the suit abates under Order 22 and step should, therefore, be taken for setting aside the order of abatement under Order 22, rule 9, Civil Procedure Code. I do not find myself in agreement with the above view expressed by the learned Judge of Madhya Bharat. Ordinarily the provisions of Order 22, Civil Procedure Code, govern the case of abatement during the pendency of the suit. This principle has been extended expressly by rule 11 of Order 22 to the case of appeals but there is no mention of its applicability to revisions. This is a case in which the maxim *inclusio unius est exclusio alterius*

(1) A.I.R. 1939 Oudh. 277

(2) A.I.R. 1949 Mad. 435

(3) A.I.R. 1953 Rajasthan 169 (F.B.).

(4) A.I.R. 1953 M.B. 272

(5) A.I.R. 1949 Lah. 186 (F.B.)

(6) A.I.R. 1949 Mad. 435

should apply, and I think, that by restricting the application of the rule of abatement expressly to suits and appeals, the intention of the legislature was to exclude from its purview cases arising from proceedings in revision. Article 176, Limitation Act, which provides a period of limitation for making the legal representatives a party, refers to legal representatives "of a deceased plaintiff or of a deceased appellant".

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In *Thakur Prasad v. Fakirullah* (1), their Lordships of the Privy Council, while dealing with section 647 of the Code of Civil Procedure, 1882, which is analogous to section 141 of the present Code, observed as under:—

"Their Lordships think that the proceedings spoken of in section 647 include original matters in the nature of suits such as proceedings in probate, guardianships and so forth and do not include executions."

In view of the above observations, I do not think that the provisions of section 141 of the Code of Civil Procedure can be read in cases of abatements under Order 22, so as to extend its scope to revisions.

In view of what has been stated above, I am of the considered opinion that the decision of the trial Court was in accordance with law. In the result, this petition is dismissed. There will be no order as to costs.

B.R.T.

CIVIL ORIGINAL

Before Tek Chand, J.

MR. R. L. KHANNA,—Petitioner

versus

THE SIMLA BANKING AND INDUSTRIAL Co., LTD.

(IN LIQUIDATION),—Respondent

Civil Original No. 76 of 1956.

1957

Banker and Customer—Customer entrusting bills to the Bank for collection—Relationship created thereby—

Nov. 29th