

AFR
Reserved on 05.12.2017
Delivered on 05.01.2018

Court No. - 34

Case :- S.C.C. REVISION No. - 543 of 2014

Revisionist :- Ravindra Kumar Agrawal and another

Opposite Party :- Sachin Agrawal

Counsel for Revisionist :- K.K. Tiwari

Counsel for Opposite Party :- K.P. Tiwari, Ashish Agrawal

Hon'ble Sudhir Agarwal, J.

Hon'ble Manoj Misra, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. An Hon'ble Single Judge (Hon'ble Pankaj Mithal, J.) by order dated 07.11.2014 has referred a question to be considered by Larger Bench and the said question reads as under:

“Whether the limitation for filing a revision under Section 25 of the Act in the High Court against the order of the District Judge/Additional District Judge as a Small Causes Courts would be 30 days or 90 days?”

2. Pursuant thereto, Hon'ble Chief Justice has constituted this Bench to answer the aforesaid question and that is how the matter has come up before this Court.

3. In brief, the issue is with regard to period of limitation for entertaining a Revision under Section 25 of Provincial Small Cause Courts Act, 1887 (hereinafter referred to as “Act, 1887”) when revision is filed before this Court. Act, 1887 is a pre-Constitution enactment and came into force on 01.07.1887.

4. History of Small Cause Courts commenced with the enactment of Provincial Small Causes Courts Act, 1860 (Act XLII of 1860). This was repealed by Mufassal Small Cause Courts Act, 1865 (Act XI of 1865). Under Section 6 of Act, XI of 1865, Small Cause Courts used to take cognizance of such suits as were allowed under the said Act. Such suits included suits or claims for amount of money found due on bond or other contract, or for arrears of rent, or for personal property

or for the value of such property or for a suit for damages, when the debt, damage or demand or such other similar terms measurable in terms of money did not exceed in amount or value of the sum of five hundred rupees. Provisions of Act No. XI of 1865 caused wide variance in judicial verdicts as to nature of suit whether cognizable by Small Cause Court or not and also with regard to provisions pertaining to appeal, hence, need to amend and consolidate the law relating to suits for Small Causes was found necessary giving rise to enactment of Act, 1887.

5. Act, 1887, as initially enacted, was divided into five Chapters and two Schedules. Chapter-I deals with the commencement of Act and Definition clauses. Chapter-II deals with constitution of Courts of Small Causes including provisions for Registrar and duties of ministerial officers. Chapter-III incorporates provisions regarding jurisdiction of Courts of Small Causes. This Chapter also contains sections dealing with exclusive jurisdiction of Courts of Small Causes. Chapter-IV deals with practice and procedure to be adopted at trial of suits in Court of Small Causes under Act, 1887. This Chapter also deals with the law of execution of decrees passed by Small Causes Courts. Chapter-V deals with supplemental provisions for Small Causes Courts. First Schedule was repealed by Amending Act, 1891. Second Schedule deals with suits excepted from the cognizance of Court of Small Causes. This Schedule in fact provides the extent of jurisdiction of Court of Small Causes.

6. We may notice at this stage that simultaneously with effect from 01.07.1887 another Statute relating to Civil Courts came to be enacted, i.e., Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as "Civil Courts Act, 1887") which came into force with effect from 01.07.1887. It repealed Bengal Civil Courts Act, 1871, vide Section 2(3) of the Civil Courts Act, 1887. It provides four type of Civil Courts vide Section 3, namely, (1) Court of District

Judge, (2) Court of Additional Judge, (3) Court of Subordinate Judge and (4) Court of Munsif. In its application to State of U.P. vide Section 2 of U.P. Act 4 of 1936, Court of "Subordinate Judge" has been substituted by Court of "Civil Judge". Vide Section 18 jurisdiction of District or Civil Judge subject to the provisions of Section 15 C.P.C. is extended to all original suits for the time being cognizable by Civil Courts. Section 19 provides the extent of jurisdiction of Munsif. Section 25 confers power upon State Government to invest upon any Civil Judge or Munsif jurisdiction of a Judge of a Court of Small Cause under Act, 1887 for trial of suits cognizable by Small Causes Courts upto the limitation mentioned in the said Section. In State of U.P. Section 25 of Civil Courts Act, 1887 has been substituted by conferring power upon High Court instead of State Government. Thus, a Small Cause Court is different than a Civil Court though in view of statutory provisions, power may also be conferred upon a Civil Court to exercise jurisdiction of a Small Cause Court or vice versa, but while dealing with the cases of Small Causes or otherwise, the same Court will have to function as a different Court. Chapter-III, Section-15 deals with subject of cognizance of suits by Courts of Small Causes. There are various State amendments from time to time and also in the State of U.P. which we would refer wherever it is relevant for the point in issue.

7. The jurisdiction of Small Causes Courts under Section 15 has to be read with Second Schedule of Act, 1887 since Small Causes Court has no jurisdiction to try any suit falling in any one of article of Second Schedule.

8. Section 16 provides that the jurisdiction of Court of Small Causes shall be exclusive save as expressly provided by Act, 1887 or by any other enactment for the time being in force. It reads as under:

"16. Exclusive Jurisdiction of Court of Small Causes.- Save as expressly provided by this Act or by any other enactment for

the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the Court of Small Causes by which the suit is triable.”

9. Section 23 of Act, 1887 refers to provisions of Code of Civil Procedure and Limitation Act as were in force in 1887. At that time, Code of Civil Procedure, 1882 (hereinafter referred to as “C.P.C., 1882”) was in operation and vide Section 2 while defining the term “district” and 'District Court” it clearly said that every Court of Small Causes shall be deemed to be subordinate to High Court and District Court. Relevant extract reads as under:

“2. In this Act, unless there be something repugnant in the subject or context-

“Chapter” means a chapter of this Code:

“district” means the local limits of the jurisdiction of a principal Civil Court or original jurisdiction (hereinafter called a “District Court”) and includes the local limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purpose of this Code, be deemed to be subordinate to the High Court and the District Court:”

10. Section 5 of C.P.C., 1882 specified provisions of C.P.C., 1882 which were made applicable to Court of Small Causes. Since in 1882, Act XI of 1865 was in operation, therefore Section 5 of C.P.C., 1882 referred to Act XI of 1865 and read as under:

“5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865, and to all other Courts (other than the Courts of Small Causes in the town of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The

other chapters and sections of this Code to not extend to such Courts.”

11. The Small Causes Courts established in the town of Calcutta, Madras and Bombay were dealt with by Section 8 of C.P.C., 1882 and reads as under:

“8. Save as provided in sections 3, 25, 86, 223, 225, 386 and Chapter XXXIV, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the town of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.”

12. Vide Section 11 of C.P.C., 1882 it was provided that Courts shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is specifically barred by any enactment for the time being in force. It reads as under:

“11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

Explanation.- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.”

13. Power of revision to High Court was governed by Section 622 of C.P.C., 1882 and reads as under:

“622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a

jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity; and may pass such order in the case as the High Court thinks fit.”

14. Under Second Schedule of C.P.C., 1882, Chapter XLVI which dealt with reference and revision to High Court was made applicable to Provincial Courts of Small Causes. Therefore, under C.P.C., 1882, revision against judgment of Provincial Small Causes Courts was provided to High Court. When Act, 1887 was enacted, power of Revision against decree and orders of Courts of Small Causes was conferred upon High Court but language of Section 25 of Act, 1887 was much wider than Section 622 of C.P.C., 1882. In **Vias Ram Shankar vs Ralla Ram Misir 1899 ILR 21 All 89** a question arose whether provision of Revision under Section 622 of C.P.C., 1882 shall override or govern the effect and operation of Section 25 of Act, 1887 and this Court held that provision of revision in C.P.C. can be taken as a guide or can be accepted as a helping provision for the decision of revision petition but that does not mean that provisions of Code override the effect or operation of provisions of Section 25 of Act, 1887.

15. C.P.C., 1882 was repealed and replaced by Code of Civil Procedure, 1908 (hereinafter referred to as “C.P.C., 1908”) which came into force on 01.01.1909. Therein also vide Section 3 every Court of Small Causes was declared subordinate to High Court and District Court. Section 4 of C.P.C., 1908 further provides as under:

“4. Savings.- (1) *In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special Jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.*

(2) *In particular and without prejudice to the generality of the*

proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.”

16. The subordination to District Court and High Court was also recognized by Act, 1887 inasmuch under Section 24 of Act, 1887 certain orders of Courts of Small Causes were made appealable to District Court. Similarly under Section 25 of Act, 1887, Revision was provided to High Court. Section 24 and 25 of Act, 1887 read as under:

“24. Appeal from certain orders of Courts of Small Causes.-
Where an order specified in clause (ff) of clause (h) of sub-section (1) of Section 104 of the Code of Civil Procedure, 1908 is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court on any ground on which an appeal from such order would lie under that section.”

“25. Revision of decree and orders of Court of Small Causes.-
The High Court, for the purpose of satisfying itself that a decree or order made in any case, decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.”

17. Section 28 of Act, 1887 declares Courts of Small Causes, subordinate to District Judge and under its administrative control, and, subject to superintendence of High Court. Section 31 of Act, 1887 provides that nothing in Act, 1887 shall prevent appointment of a person who is Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office. Section 33 of Act, 1887 talks of application of Act and Code to Court invested with jurisdiction of Small Cause Court but says that two Courts shall be deemed different Courts. It reads as under:

“33. Application of Act and Code to Court so invested as to two Courts.- A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.”

18. Section 36, as initially enacted, made amendment in Limitation Act, 1877 (hereinafter referred to as “L.A., 1877”). It was subsequently repealed by Limitation Act, 1908 (hereinafter referred to as “L.A., 1908”) and simultaneously also repealed Section 36 of Act, 1887 and now limitation is governed by Limitation Act, 1963 (hereinafter referred to as “L.A., 1963”). The overlapping of revisional provisions contained in Section 622 of C.P.C., 1882 and Section 25 of Act, 1887 and confusion created thereby, sought to be removed by Legislature by enacting C.P.C., 1908 and in Section 7 applicability of provisions of C.P.C, 1908 was limited to certain provisions but it specifically excludes Section 115 of C.P.C., 1908. Section 7 as originally enacted in 1908 read as under:

“7. Provincial Small Cause Court.- The following provisions shall not extend to Courts constituted under Provincial Small Cause Court Act, 1887 (9 of 1887) or to Courts exercising the jurisdiction of a Court of Small Causes under that Act that is to say,-

(a) So much so of the body of Code as relates to,-

(i) Suits excepted from cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decree against immovable property;

and

*(b) the following Section that it to say, Section 9, Sections 91 and 92, Sections 94 and 95 so far as they relate to injunctions and interlocutory orders and **Sections 96 to 112 and 115.***”

19. There are some insertions and amendment in Section 7 by Act 1 of 1926, Act 4 of 1941 and Act 2 of 1951 and amended Section 7 reads as under:

“7. Provincial Small Cause Courts.- *The following provisions shall not extend to Courts constituted under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under the Berar Small Cause Courts Law, 1905, or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act or law or to Courts in any part of India to which the said Act does not extend exercising a corresponding jurisdiction **that is to say,-***

(a) so much of the body of the Code as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immovable property; and

(b) the following sections, that is to say-

Section 9, sections 91 and 92, sections 94 and 95 so far as they authorise or relate to-

(i) orders for the attachment of immovable property,

(ii) injunctions,

*(iii) the appointment of a receiver of immovable property,
or*

*(iv) the interlocutory orders referred to in clause (e) of **section 94, and sections 96 to 112 and 115.***”

20. Therefore, Section 115 C.P.C., 1908 is specifically excluded in respect of revisions governed by Section 25 of Act, 1887 and entire

field is now governed by Act, 1887. When L.A., 1963 was enacted, Article 131 of Schedule while providing limitation for revisions specifically mentioned revisions under C.P.C., 1908 and Code of Criminal Procedure, 1898 and it reads as under:

	Description of application	Period of Limitation	Time from which period beings to run
131	To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908 (5 of 1908) or the Code of Criminal Procedure, 1898 (5 of 1898).	Ninety days	The date of the decree or order or sentence sought to be revised.

21. We may notice at this stage that under L.A., 1908, no special period of limitation was prescribed for Civil Revision Applications. The normal practice in High Courts was to entertain Revisions only if they are filed within three months of the date of order sought to be revised. So far as Code of Civil Procedure is concerned, earlier the view was that Rules of limitation were foreign to administration of criminal justice and unless provided by Legislation, period of limitation cannot be imported.

22. In **Shah Naim Ata Vs. Emperor AIR 1930 Oudh 401**, an attempt was made to bring in Article 181 of L.A., 1908 to a criminal revision filed in the High Court against the order of inferior Criminal Court, but this Court held that Article 181 shall not be attracted in such Revision. Now to govern the Revisions filed under C.P.C., 1908 and Cr.P.C., 1898, an uniform period of limitation has been prescribed by Article 131 of L.A., 1963.

23. Section 25 of Act, 1887 was amended by substitution in State of U.P. by U.P. Small Cause Court (Sansodhan) Act, 1966 (U.P. Act XVII of 1966) (hereinafter referred to as “U.P. Amendment Act, 1966”) and Section 25 in its application in State of U.P. read as under:

“25. Revision of decrees and orders of Small Causes.- The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Cause was according to law, may of his own motion, or on the application of an aggrieved party made within thirty days from the date of such decree or order, call for the case and pass such order with respect thereto as he thinks fit.

24. The Small Cause Courts were not having jurisdiction to take cognizance of suits for taking possession of immovable property. However an amendment was made in U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act XIII of 1972) vide Section 20(6) and thereby eviction suits against tenants after expiration of its tenancy was taken out from purview of exception and made cognizable by Small Causes Courts. In order to have a consolidated Statute, Provincial Legislature was again intervened by U.P. Civil Laws Amendment Act, 1972 (hereinafter referred to as “Act, 1972”) and Sub-section 6 of Section 20 of U.P. Act XIII of 1972 was deleted. Section 15 of Act, 1887 was amended by inserting a proviso and explanation and in Section 25 also a proviso was inserted to the following effect:

“Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of Judge of Small Causes, the power of revision under this section shall vest in the High Court.”

25. In view of above backdrop, it is evidently clear that provision of revision under Section 115 C.P.C., 1908 is not applicable to Small Cause Courts. While providing limitation for filing revision under Section 25 by U.P. Amendment Act, 1966 and inserting proviso in the said Section 25, since Provincial Legislature already provided limitation, hence it only says that in case power of Small Cause Court has been exercised by District Judge or Additional District Judge, in

such case power of revision shall vest in High Court. It is only clarificatory in nature otherwise principal Section 25 in respect of all other matters stands as it is.

26. We may also notice at this stage that by U.P. Civil Laws Amendment Act, 1972, valuation in respect of matters which are to be dealt with by Small Cause Court, Civil Court and District Judge were changed and amendment was made in Section 25 of Civil Courts Act, 1887 by inserting a proviso under Sub-section (1) and inserting Sub-sections (2) and (3) and also an amendment was made in Section 115 of C.P.C., 1908. Further so far as Article 131 is concerned, since it is specifically applicable to Revision filed under C.P.C., 1908, we find no reason to read therein Section 25 of Act, 1887 as that will amount to re-writing of L.A., 1963 which is not justified when otherwise provisions are clear. Scheme of Statute makes it very clear that legislature intended an expeditious disposal of matter, hence had no reason to provide higher limitation for revision when it is filed in High Court and a shorter period of limitation when revision is to be filed in District Court. When language and scheme of Statute is unambiguous and clear, we find no reason to create or read therein some kind of ambiguity or create a confusion and thereafter to resolve it by meddling with the language of Statute which may have effect of reading something therein. No Court is expected to unnecessarily find out any *casus omissus* in a Statute when there is no reason or occasion for the same.

27. There is no presumption that a *casus omissus* exists. Court should avoid creating a *casus omissus* where there is none. It would be appropriate to recollect the observations of Devlin, L.J. in **Gladstone Vs. Bower,(1960) 3 All ER 353 (CA)**:

"The Court will always allow the intention of a statute to override the defects of working but the Court's ability to do so is limited by recognized canons of interpretation. The Court

may, for example, prefer an alternative construction, which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for casus omissus."

28. In **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others 1978 (36) FLR 266**, Court quoted with approval the following observation of Lord Simonds in **Magor & St. Mellons R.D.C. Vs. Newport Corporation, (1951) 2 All ER 839 (841)**:

"The duty of the Court is to interpret the words that the Legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited."

29. It would be appropriate at this stage to remind another principle that though a Court cannot supply a real *casus omissus*, it is equally evident that it should not so interpret a statute as to create *casus omissus* when there is really none.

30. In **Vemareddy Kumaraswamy Reddy and another Vs. State of Andhra Pradesh 2006 (2) SCC 670**, Court reiterated that while interpreting a provision, Court only interprets the law and cannot legislate. If a provision of law is misused and subject to the abuse of process of law, it is for the legislature to amend, modify or repeal it if deemed necessary. The legislative *casus omissus* cannot be supplied by judicial interpretative process.

31. It is true that in **Udai Bhan Gupta Vs. Hari Shankar Bansal and others AIR 1984 SC 1469**, there is an observation that period of limitation under Section 25 of Act, 1887 would be governed by Article 131 but then we find that Court left the question open and did not decide the same. Moreover, we find that Court had neither any occasion nor had actually gone into entire backdrop of Scheme of Statute concerned and, therefore, it cannot be said that the said

judgment should be read as if laying down a law that for the purpose of limitation of filing Revision in this Court, under Section 25 of Act, 1887, it is Article 131 of L.A., 1963 which will be applicable for the reason that Article 131 is specifically confined to Revisions under C.P.C., 1908 and Cr.P.C., 1898 and has no reference to Section 25 of Act, 1887.

32. Similar view has been taken by an earlier Division Bench in **District Manager, Food Corporation of India and others Vs. Yans Prasad Jain and another 1983 (9) ALR 630** and relevant observations read as under:

“The proviso does not denote or delineate the extent or incidents of the power of revision. It does not state whether the power of revision lies on a question of jurisdiction or on a question of law or fact or all of them. Of course, it does not prescribe any period of limitation. It does not confer power of revision on the High Court exercisable on its own motion. All these things have, however, been provided in Section 25 itself.

In our opinion, the words "under this Section" occurring in the clause "the power of revision under this Section shall vest in the High Court" provide the clue. They mean that the nature and character of the power of revision vested in the High Court is as is prescribed in this section, i.e. Section 25. The proviso does not confer a different or a fresh power but the same power of revision as is given to the District Judge. To avoid duplication, the proviso defines the power by saying "under this section". One has to look to the section and apply it to the High Court.

In other words, the High Court can exercise the power of revision suo motu. It can also exercise it on the application of an aggrieved party made within 30 days. It is exercisable for the purpose of satisfying itself that the decree or order was

according to law. The further limitation being that the High Court can exercise the power of revision only in relation to a case decided by a District Judge or an Additional District Judge.

To summarise, the position is that Section 25 read with its proviso confers a power of revision on the District Judge as well as the High Court depending upon the status of the court which exercised the original jurisdiction. In other respects, the incidents of the power of revision are the same in either case.

In our opinion, an aggrieved party can file a revision before the High Court by an application made within 30 days of the date of the order. If, it is filed beyond this period, an application for condonation of delay under Section 5 Limitation Act will lie irrespective of the stage at which the fact of delay comes to light. If the delay is in a particular case, not condoned, the application in revision will have to be dismissed even where the record has been summoned at the instance of such party. The Full Bench decision in Rama Kant Singh (supra) is distinguishable. There Section 48 Consolidation of Holdings Act did not confer any right on a party. It provided power of revision to the Director. Section 25 SCC Act confers a right of revision on a party. Of course, this does not affect the suo motu power of the Court. But for its invocation, a party has no right to be heard.”

33. We are in respectful agreement therewith. We, therefore, answer the question referred to this Bench and dispose of this reference by holding that limitation for filing revision under Section 25 of Act, 1887 whether before District Judge or this Court, it is 30 days.

34. Let the matter be placed before learned Single Judge to deal with the matter further in accordance with law.

Dt. 05.01.2018

PS