

T. N. Mahajan v. M/s. Janta Steel and Metal Coop. Industrial Society Ltd., 5948, Billimagan, Delhi etc. (M. R. Sharma, J.)

all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

(21) The apex society which supplies funds to its member-society is expected to know that officials of a particular standard and security of service would be best suited to handle the funds advanced by it. The rules have to be framed by it regarding regulation of recruitment and conditions of service only. By enacting section 84-A(2) of the Act, the Legislature has given a clear expression to its policy and has not delegated its essential legislative functions in favour of an outside agency. The second contention raised on behalf of the petitioner also deserves to be repelled and I order accordingly.

(22) For the reasons mentioned above, I would hold that the rules framed under section 84-A of the Act do not infringe upon the rights of a managing body of a primary co-operative society appearing in section 23(1) of the Act and by enacting section 84-A of the Act the Legislature has not abdicated its essential legislative functions. I would accordingly order that this petition be dismissed with no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

H.S.B.

REVISIONAL CIVIL

Before B. S. Dhillon and M. R. Sharma, JJ.

T. N. MAHAJAN,—Appellant.

versus

M/S JANTA STEEL AND METAL CO-OP. INDUSTRIAL SOCIETY LTD., 5948, BILLIMAGAN, DELHI and another,—Respondents.

Civil Revision No. 864 of 1972.

May 3, 1976.

Code of Civil Procedure (V of 1908)—Section 115—Punjab High Court Rules and Orders Volume V—Chapter 1-A, Rule 7—Revision

petition not accompanied by certified copy of order sought to be revised—Whether can be entertained—Rule 7—Whether directory.

Held, that the use of the word 'shall' does on a cursory perusal of rule 7 appearing in Chapter 1-A of Volume V of the Punjab High Court Rules and Orders, shows that a petitioner who approaches the High Court for exercise of revisional jurisdiction is under a duty to file a certified copy of the decree or order, or judgment passed by the lower court along with the petition for revision. But from the phraseology of the rule alone it cannot be held to be of mandatory character. The revisional power may be exercised by the High Court either *suo motu* or on a petition presented to it in this behalf. When the High Court exercises *suo motu* powers, the certified copy of the order or judgment passed by a Subordinate Court need not be before it. The High Court can also exercise this jurisdiction *ex debito justicie* on the basis of information conveyed to it by anybody other than the aggrieved party. The object is to give relief in case of manifest injustice unhampered by the technical formalities of procedure. In other words, the very nature and design of section 115 of the Code of Civil Procedure 1908 is such as would not admit the said rule 7 being of mandatory character. A Court of revision may insist that a certified copy of the judgment of the trial Court should be filed and may even decline to exercise revisional powers when such a copy is not filed either along with the petition or during the time allowed by it. If the facts are otherwise admitted or there is no dispute about the real purport of the order or the judgment rendered by the trial Court, the High Court may even dispense with the filing of its copy but no embargo can be placed on the rights of a revisional Court to do justice on the basis of technicalities of procedure. Thus, rule 7 is directory in nature and it is open to the High Court to entertain a revision petition in the absence of a copy of the order or judgment sought to be revised, or to allow late production of such a copy or even to dispense with its production. The Court would have to exercise discretion on the facts and circumstances of each case and no hard and fast rules can be laid down on the point.

(Paras 4, 5 and 8).

Petition under section 115 C.P.C. for Revision of the order of Shri O. P. Saini I Additional District Judge, Ludhiana dated the 4th March, 1972 reversing that of Shri H. S. Ahluwalia Senior Sub Judge Ludhiana dated the 24th October, 1970 accepting the appeal and setting aside, the order of lower court; and leaving the parties to bear their own costs.

S. S. Kang, Advocate, for the Petitioner.

H. L. Sarin, Senior Advocate with M. L. Sarin, Advocate, for the respondents.

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JUDGMENT

M. R. Sharma, J.—

(1) The revision petition filed in this Court was not accompanied by a certified copy of the order passed by the trial Court. The petition was admitted to hearing on an assurance given on behalf of the petitioner that he would file certified copy of the order passed by the learned Court below as soon as the same was made available.

(2) When the case came up before me sitting in Chambers, a preliminary objection was raised on the strength of a Single Bench decision of this Court in *Behari Lal and others v. Smt. Kaushalya Devi*, (1), that such a petition was not competent in the absence of a certified copy of the order passed by the trial court and there was no provision of law which entitled the revisional Court to pass an order dispensing with the production of the copy of such an order with the revision petition. I thought the view taken in *Behari Lal's* case (*supra*) was too stringent and needed some modification. At my request the learned Chief Justice ordered that this case should be decided by a Division Bench.

(3) Rule 7 appearing in Chapter 1-A of Volume V of the Rules and Orders of the Punjab High Court, reads as under :—

"7. Every such petition shall be stamped as required by law and shall be accompanied by a copy of the decree or order in respect of which such application is made and by a copy of the judgment upon which such decree is founded.

"In the case of petitions for revision of the decree or order of an appellate court, a copy of the judgment or order of the court of first instance shall also be filed."

(4) The use of the word 'shall' does, on a cursory perusal of the rule, show that a petitioner who approaches this Court for exercise of revisional jurisdiction is under a duty to file a certified copy of the decree or order, or judgment passed by the lower court along

with the petition for revision. But from the phraseology of the rule alone it cannot be held that this rule is of mandatory character. In *State of Uttar Pradesh and others v. Babu Ram Upadhya*, A.I.R. 1961 S.C. 751, the Court observed as under :—

“The relevant rules of interpretation may be briefly stated thus : When a statute uses the word ‘shall’, *prima facie*, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature, the Court may consider, *inter alia* the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom and, above all, whether the object of the legislation will be defeated or furthered.”

(5) The power of revision is conferred on this Court under section 115 of the Code of Civil Procedure, which empowers it to call for the record of any case decided by any Court subordinate to it in which no appeal lies and if the subordinate Court has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction so vested in it, or has acted in exercise of its jurisdiction illegally or with material irregularity, this Court can rectify the error and pass such an order as it thinks fit. This power may be exercised by the High Court either *suo motu* or on a petition presented to it in this behalf. When the High Court exercises *suo motu* powers, the certified copy of the order or judgment passed by a subordinate Court need not be before it. The High Court can also exercise this jurisdiction *ex debito justicie* on the basis of information conveyed to it by anybody other than the aggrieved party. The object is to give relief in case of manifest injustice unhampered by the technical formalities of procedure. In other words, the very nature and design of this statutory provision is such as would not admit of this rule being of mandatory character.

(2) A.I.R. 1961 S.C. 751.

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(6) Mr. Sarin, the learned counsel for the respondents has relied upon *Jagat Dhish Bhargava v. Jawahar Lal Bhargava and others*, (3), in which it has been held that the provision of Order XLI, rule 1, Code of Civil Procedure, which requires that a certified copy of the decree should be filed along with the memorandum of appeal is a mandatory provision and in the absence of the decree the filing of the appeal would be incomplete, defective and incompetent. This case is clearly distinguishable because there is a specific provision in the Code requiring the appellant to file a copy of the decree appealed against along with the memorandum of appeal. The right of appeal is a creature of the statute. If a statute lays down that an appeal shall be heard only after some conditions are satisfied, the appellate Court cannot entertain and decide the appeal unless and until those conditions are satisfied. Even then the Supreme Court held in this case that no hard and fast rules of general application could be laid down for dealing with appeals defectively filed under Order XLI rule 1. At the cost of repetition, I would like to add that unlike the exercise of appellate jurisdiction revisional jurisdiction can be exercised even *suo motu*. It is precisely for this reason that an express provision had to be made in Order XLI, rule 1, enabling the appellate Court to dispense with the copy of the judgment appealed against. In view of the wide ambit and scope of the revisional power, it was not considered necessary to make such a provision in rule 7, quoted above. At the same time, there is no express provision in the rules which debars a Court of revision to dispense with the production of the copy of the order or judgment sought to be revised. In a situation like this, the Court can pass suitable orders, either dispensing with the production of such a copy or allowing its production at a late stage as the justice of a particular case demands. The procedural Codes are exhaustive only on the points expressly dealt by them. A Court can always evolve its own procedure regarding the points on which such Codes are silent in the interest of justice, equity and good conscience.

(7) If the stringent view is accepted, then in many cases in which revisional Court is satisfied that because of erroneous exercise of jurisdiction manifest injustice has resulted, it would be helpless in

undoing the wrong. I doubt if the framers of the Code of Civil Procedure intended such a limited construction to be placed on section 115 of this Code.

(8) A Court of revision may insist that a certified copy of the judgment of the trial Court should be filed and may even decline to exercise revisional powers when such a copy is not filed either along with the petition or during the time allowed by it. If the facts are otherwise admitted or there is no dispute about the real purport of the order or the judgment rendered by the trial Court, the High Court may even dispense with the filing of its copy but I fail to see how an embargo can be placed on the rights of a revisional Court to do justice on the basis of technicalities of procedure. I would, therefore, hold that rule 7 quoted above is directory in nature and it is open to the High Court to entertain a revision petition in the absence of a copy of the order or judgment sought to be revised, or to allow late production of such a copy or even to dispense with its production. The Court would have to exercise discretion on the facts and circumstances of each case and no hard and fast rules can be laid down on this point. It suffices to mention that this Court has seldom shown any indulgence to a party who is not serious and vigilant about prosecuting its own case. With utmost respect to the learned Judge who decided *Behari Lal's case* (supra), it may be said that the view taken by him appears to unduly narrow down the wide scope of the provision of section 115, Code of Civil Procedure, and does not commend itself to me.

(9) Coming now to the case in hand, the revision petition was filed on July 10, 1972. Along with the petition, an affidavit was filed in which it was stated that a copy of the order passed by the learned Senior Subordinate Judge, Ludhiana, had been applied for and the same would be produced in Court as and when it was obtained. Till today this copy has not been filed. This shows that the petitioners are not seriously and vigilantly pursuing this petition. In this situation, no indulgence should be shown to him. The petition deserves to be dismissed on this score alone and I order accordingly.

H. S. B.