

CIVIL MISCELLANEOUS

Before D. Falshaw, and S. B. Capoor, JJ.

GIAN SINGH SAHNI,—Petitioner.

versus

DISTRICT AND SESSIONS JUDGE, DELHI AND

ANOTHER,—Respondents.

C. Misc. 746-D of 1960 in S.C.A. 37-D of 1959.

1961
Jan., 3rd.

Code of Civil Procedure (V of 1908)—Order 45. Rule 7—High Court Rules and Orders, Volume V, Chapter 8-A. Rule 3—Supreme Court Rules, Chapter XII, Rules 1A, and 3—Security deposit—Whether can be reduced to a figure lower than Rs. 2,500 by the High Court.

Falshaw, J.

Held. that Rules 1A and 3 of Chapter XII of the Supreme Court Rules permit the High Cturt granting the certificate to depart from the standard figure of Rs. 2,500 relating to security deposit and to reduce this amount in suitable cases.

Petition under Chapter VIII, Volume 5 of the High Court Rules and Orders, Rules 3 and 4, read with Supreme Court, Rules, Part II. Order XII and Rule 1(1)-A, 2, 3 and 4.

I. M. LAL, ADVOCATE, for the Petitioner.

JINDRA LAL. ADVOCATE, for the Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J.—The question which arises in this application filed by Gian Singh Sahni is whether under any circumstances this Court has the power, after granting a certificate for fitness for appeal to the Supreme Court under article 133(1)(c) of the

Constitution, to dispense with the furnishing of the whole or any part of the security of Rs. 2,500 required to be deposited for the respondent's costs under rule 3 of Chapter 8-A of Volume V of the Rules and Orders of this Court.

The circumstances under which the question has arisen are as follows. The petitioner filed a petition in this Court under article 226 of the Constitution challenging his retirement from Government service at the age of 55, and raising the question whether the provisions of article 311 of the Constitution were applicable. His petition was dismissed by G. D. Khosla and Bishan Narain, JJ., on the 19th of February, 1959, and a certificate of fitness under article 133(1)(c) of the Constitution was granted by Chopra, J., and myself almost a year later, on the 15th of February, 1960. The present application was filed about two months later on the ground that the petitioner was not in a position to deposit the sum of Rs. 2,500 as security for the costs of the respondents, who are the District and Sessions Judge, Delhi, and the Administrator, Delhi Union Territory, because since his retirement, which he is challenging, he has only been in receipt of an interim pension of Rs. 50 per mensem. He had in fact applied within the period of six weeks fixed for the deposit of the security by rule 3 direct to the Supreme Court for relief in this matter, but his petition was dismissed by the order of K. Subba Rao, and J. C. Shah, JJ., dated 11th April, 1960, which reads :—

“This is an application for exempting the petitioner from depositing security of Rs. 2,500. The appeal has not yet been admitted. In the circumstances, the petitioner may file an application in the High Court under rule 1A of Order XII of the Supreme Court Rules, 1950. The application is dismissed.”

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His application in this Court was promptly filed after that order had been passed.

The relevant rules are as follows. Rule 3 of Chapter 8-A, Volume V of the High Court Rules and Orders reads—

“When the Court grants a certificate, which shall be in Form B appended to those rules, the petitioner shall be required to deposit within ninety days, or such further period not exceeding sixty days, as the Court may, upon cause shown, allow from the date of the decree complained of, or within six weeks from the date of the grant of the certificate (whichever is the later date) a sum of Rs. 2,500 as security for the respondent’s costs.

In any special case the Court may, if it thinks fit upon the application of the respondent, require security to a larger amount; but in no case exceeding rupees five thousand.”

Order XII of the Supreme Court Rules, 1950, deals with appeals on certificate by High Court. The relevant rules read as follows :—

“(1) Subject to any special directions which the Court may give in any particular case, the provisions of Order XLV of the Code, and of any rules made for the purpose by the High Court or other authority concerned, so far as may be applicable, shall apply in relation to appeals preferred under Articles 132(1), 133(1) and 135 of the Constitution.

(1A) The security to be furnished under Order XLV, rule 7(1)(a) of the Code

shall, unless otherwise ordered by the Court appealed from, be in the sum of Rs. 2,500. The Court appealed from may in appropriate cases enhance the amount of security to be deposited up to a maximum of Rs. 5,000.

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- (3) Where an appellant, having obtained a certificate from the High Court, fails to furnish the security or make the deposit required, that Court may, on its own motion or on application in that behalf made by the respondent, cancel the certificate and may give such directions as to the costs of the appeal and the security entered into by the appellant as it shall think fit or make such further or other order as the justice of the case requires."

The learned counsel for the respondents has contended that there is no ambiguity whatever in rule 3 of the Rules of this Court which fixes the security deposit at Rs. 2,500 and the only departure from this figure permitted is in an upward direction to the extent of Rs. 5,000 in special cases where the costs of the respondents may be expected to exceed the standard figure.

It would, however, appear to be rather surprising that if this Court has no power whatever to go below Rs. 2,500 the learned Judges of the Supreme Court should not have dismissed the petitioner's application outright instead of referring him to this Court and it seems to me that the rules of the Supreme Court do permit some departure from the standard figure.

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The remaining rules of this Court in Chapter 8-A relating to civil cases do not contain any further provision as to what is to happen if the security ordered under rule 3 is not deposited within the specified period, and it has been left to the rules of the Supreme Court to provide what is to be done in such a contingency, namely in Order XII, rule 3, and in my opinion rule 3 clearly gives considerable discretion to this Court. As I read it the meaning of the provisions of rule 3 is as follows. When a party has obtained a certificate from the High Court but fails to furnish the security within the proper period the High Court has the alternative of, either *sue motu* or on application from the respondent, cancelling the certificate, or it may pass some other order, in the final words of the rule itself, "as the justice of the case requires". It would have been a perfectly simple matter to direct that if the security were not deposited within the specified period the Court must cancel the certificate *suo motu* or on an application from the respondent, but the further provisions of the rule as it stands appear to indicate that in suitable cases the Court will have the power either to reduce the amount of the security to be furnished, or even possibly to dispense with it altogether. I cannot imagine what other meaning can be placed upon the words "make such further or other order as the justice of the case requires".

On this interpretation I certainly feel that the case of the petitioner requires some consideration on the merits, since he is fighting to regain his position in Government employment which he lost about two years ago, his allegation that since he was made to retire he has only been in receipt of a pension of Rs. 50 per mensem being uncontradicted, and I would accordingly order that the amount to be deposited as security by the petitioner under rule 3 of Chapter 8-A of Volume V of the Rules

and Orders of this Court read with rules 1A and 3 of Order XII of the Rules of the Supreme Court be reduced to Rs. 500 to be deposited within one month from today. I would leave the parties to bear their own costs on the application.

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S. B. CAPOOR, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, J.

SHIV SINGH,—Petitioner

versus

HANS RAJ NAYYAR,—Respondent.

Civil Revision No. 560-D of 1960.

*Delhi Shops and Establishments Act (VII of 1954)—
Section 21—Order under—Whether open to revision by
High Court—Remedy against such an order indicated.*

1961

Jan., 6th.

Held, that the Delhi Shops and Establishments Act, 1954, does not contain any provision whatever for any appeal or revision and there is apparently nothing to stop any person covered by the Act, who has a claim, from enforcing it by means of an ordinary civil suit. No revision against the order of the Authority passed under section 21 of the Act is competent under section 115 of the Code of Civil Procedure or section 44 of the Punjab Courts Act as the Authority under the Act is not a civil Court subordinate to the High Court. The order of the Authority can only be challenged by a petition under article 226 or 227 of the Constitution by way of *certiorari* and to such a petition the Authority is a necessary party.

Falshaw, J.

Petition under Article 227 of Constitution of India, for revision of the Order of Shri K. S. Sindhu, Authority, Delhi Shops and Establishments Act, dated 18th November, 1960, dismissing the application as frivolous. ..

KEWAL RAM, ADVOCATE, for the Petitioner.

B. R. MALIK, ADVOCATE, for the Respondent.