IN THE KERALA HIGH COURT

Justice V. R. Krishna Iyer

CHANDRASEKHARAN NAIR v. PURUSHOTHAMAN NAIR

Citation(s): 1969 KHC 142 : 1969 KLT 687

ORDER

1. "Heard. No ground, Dismissed" is the brief, rather obscure, order passed by the learned District Judge which I am called upon to revise.

2. An objection is taken preliminarily that there is no error of jurisdiction such as would attracts. 115 of the Civil Procedure Code. Error of law there may be, but every error of law does not furnish a ground in revision. The question then is whether the error pointed out bears upon jurisdiction. Had the District Judge expressed himself more clearly, or at some reasonable length, it would have been obvious that there was an error of jurisdiction. The fact that he has chosen to be mute cannot make his order inscrutable and I am able to see beneath the order a plain refusal to exercise a jurisdiction which he has; for, the jurisdiction that is invoked in a case of review under O.47 R.1 CPC. comes into existence immediately an error apparent on the face of the record is made out. In this case, an error of law exists for the obvious reason that once notice has been issued under O.44 R.1(2) CPC. the stage for consideration as to whether the decree appealed from is contrary to law or is otherwise erroneous or unjust has passed and a reconsideration of that question at a later stage is itself without jurisdiction. A binding authority for that position is found in Krishna Bhatta v. Ananta Bhatta (1961 KLT 38) and a catena of other cases such as those reported in S.K.M.R.M. Somasundaram Chettiar v. Rm. Ar. Ar. Rm. Arunachalam Chettiar (AIR 1932 Mad. 523), Abdul Majid Sk. Ibrahim v. Bhaurao Atmaram Patil and Shib Krishna Das v. Panchanan Ganguly (AIR 1961 Cal. 346 FB) speak in the same strain. If, therefore, an error of law has crept into the judgment of the District Judge, the further question arises whether that is sufficient to justify a review. Here again, the ruling reported in Pathrose v. Sankaran Nair (1969 KLT 15) is authority for the proposition that where there is a binding decision prior or subsequent to the order sought to be reviewed taking a different view of the law, that is a good ground for review because it would be the discovery of a new and important matter and in any case an error apparent on the face of the record within the meaning of R.1 of O.47 CPC. where it is a subsequent decision it is the discovery

of a new and important matter and where it is an antecedent decision it is an error apparent on the face of the record. In this view, the Court was bound to exercise a jurisdiction to review which it possessed but, perhaps, was not pointedly aware of. Under the circumstances, the only course open to me is to allow the revision petition and set aside the order of the learned District Judge in I. A. No. 1326 of 1967. Since the error of law is clear there is no need for a further hearing of the matter in O. P. No. 102 of 1966 so far as the entertain ability of the appeal is concerned.

Therefore, I would direct the learned District Judge to take the appeal on file as a pauper appeal and proceed to dispose it of on that footing, without further ado about the decree appealed from being contrary to law or otherwise erroneous on unjust.

3. The proper course for the revision petitioner would certainly have been to challenge the order passed by the District Judge in O. P. No. 102 of 1966 instead of seeking a review of that order and then come up in revision. For taking this devious route I deny him costs.