REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1232 OF 2015
[Arising out of SLP (Civil) No.16099 of 2012]

Shri Westarly Dkhar & Ors. …….Appellants

Versus

Shri Sehekaya Lyngdoh .....….Respondent

J U D G M E N T

R.F.Nariman, J.

1. Special leave granted.

2. The instant appeal by way of a Special Leave to Appeal has been filed against the judgment and final order dated April 27, 2012 passed by the High Court of Gauhati, Shillong Bench at Shillong in Civil Revision Petition No. 18 (SH) of 2010 filed by the Respondent.

3. The appeal arises out of an ex-parte ad-interim injunction passed by the Subordinate District Council Court in a suit instituted by the Respondent, which is registered as Title Suit No. 16 of 2009.

On 30th September, 2009, an ad-interim ex-parte injunction was granted by the Subordinate District Council Court, in the following terms:

> *"On careful perusal of the same, I am satisfied that there is an urgency in the matter for restraining the opposite parties from entering into the suit land.*
>
> *I am also satisfied that the petitioner shall suffer irreparable loss and injury if the ad-interim injunction is not granted as it can be evaluated from the materials available on the record, without giving into the merits of the case, hence the ad-interim injunction is granted as prayed for.*
>
> *Therefore, the ad-interim injunction is granted to the petitioner whereby the opposite parties No.1-4 or their agents or any persons acting on their behalf or instruction from the opposite parties No. 1-4 are hereby restrained from entering or working in the suit land as per schedule mentioned in the plaint."*

4. By an order dated 29th October, 2009, the District Council Court admitted an appeal against the said order and stayed it. By a further order dated 9th March, 2010, the ad-interim ex-parte injunction was set aside as the District Council Court allowed the appeal. A Civil Revision Petition was filed against the said order, and by the impugned order dated 27th April, 2012, the revision was allowed stating that since an appeal had been filed within 30 days of the ad-

interim ex-parte order, it would not be maintainable under the Code of Civil Procedure and, therefore, the appellate order was set aside.

5. Learned counsel for the appellants argued that the Civil Procedure Code does not apply in these areas but only the spirit thereof applies. The appeal was very much maintainable as it was granted by Rule 28 of The United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953.

6. Learned counsel for the respondent, on the other hand, supported the judgment under appeal and stated that this Court's judgment in **A. Venkatasubbiah Naidu v. S. Chellappan & Ors.**, (2000) 7 SCC 695 fully supported the case of the respondent inasmuch as an aggrieved party cannot approach the Appellate Court during the pendency of the application for vacation of a temporary injunction. An appeal can only be entertained under an extraordinary circumstance – namely, the failure or omission of the Subordinate Court to comply with the provisions of Order 39 Rule 3A. Further, the learned counsel relied upon the judgment in **Innovative Pharma Surgicals v. Pigeon Medical Devices Pvt. Ltd. & Ors.,** AIR 2004 AP 310, stating the same thing.

7. The United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 (hereinafter referred to as "1953 Rules") have been made under Paragraph 4 of the Sixth Schedule to the Constitution of India. Rules 28, 29 and 47 are quoted hereinbelow, as they are applicable to the facts of this case:

> ***"28. Appeal to District Council Court*** *– An appeal shall lie to the District Council Court from the decisions of a Subordinate District Council Court in any case, Civil or Criminal. The District Council Court may hear the appeal itself or may endorse it for hearing to the Additional District Council Court:*
>
> *Provided that when the District Council Court is not sitting by reason of its Presiding Officer being on leave or otherwise, the appeal shall lie to the Additional District Court.*
>
> *Provided further that such appeals are, accompanied by a copy of the order appealed against and a clear statement of the ground of appeal, and are filed within sixty days from the date of the order, excluding the time required for obtaining a copy of the order appealed against.]*
>
> ***29. District Council Court to be a Court of Appeal*** *- Subject to the provision of rules 30 and 32, the District Council Court shall be a Court of appeal in respect of all suits and cases triable by Additional Subordinate District Council Court. The District Council Court may hear the appeal itself or may endorse it for hearing to the Additional District Council Court:*
>
> *Provided that when the District Council Court is not sitting by reason of its Presiding Officer being on leave or otherwise the appeal shall lie to the Additional District Council Court.*

Provided further that such appeal are accompanied 'by a certified copy of the order appealed against and a clear statement of the ground of appeal and are filed within sixty days from the date of the order excluding the time required for entertaining a copy of the order appealed against.

***47. Procedure in civil cases** - In civil cases, the procedure of the District Council Court, [the Additional District Council Court] the Subordinate District Council Court [and the Additional Subordinate District Council Courts] shall be guided by the spirit but not bound by the letter of the [Code of Civil Procedure, 1908 as amended up to date] in all matters not covered by recognized customary laws or usages of the District."*

8. It is clear from the reading of these Rules that an appeal is provided as a matter of right from all "decisions" of a Subordinate District Council Court to the District Council Court. That an interim order is a "decision" for the purpose of these Rules is not disputed before us. Further, under Rule 47, in civil cases, these courts shall be guided by the spirit but not bound by the letter of the Code of Civil Procedure in all matters not covered by customary laws. In **State of Nagaland v. Ratan Singh Etc.,** (1966) 3 SCR 830, this Court, when confronted with a challenge to these Rules, repelled the challenge in the following terms:

"In order to avoid this implication, the Rules are attacked as ultra vires Arts. 21 and 14. Article 21 is used

because it is contended that these Rules do not amount to law as we understand it, particularly where the Rules say that not the Criminal Procedure Code but its spirit is to govern the administration of justice. It is urged that this is not a law because it leaves each officer free to act arbitrarily. This is not a fair reading of the Rule. How the spirit of the code is to be applied and not its letter was considered by this Court in Gurumayum Sakhigopal Sarma v. K. Ongbi Anisija Devi (Civil Appeal No. 659 of 1957 decided on 9th of February, 1961) in connection with the Code of Civil Procedure. With reference to a similar rule that the courts should be guided by the spirit and should not be bound by the letter of the Code of Civil Procedure this Court explained that the reason appeared to be that the technicalities of the Code, should not trammel litigation embarked upon by a people unused to them. In that case although a suit was ordered to be dismissed for default of appearance, an order was passed on merits. The question arose whether it was dismissed under O. 9, r. 8 or O. 17, r. 3 of the Code of Civil Procedure. It was held by this Court that it did not matter under which Order it was dismissed but that no second suit could be brought on the same cause of action without getting rid of the order dismissing the suit. In this way this Court applied the spirit of the Code and put aside the technicalities by attempting to find out whether the dismissal was referable to O. 9, r. 8 or O. 17, r. 3 of the Code. That case illustrates how the spirit of the Code is used rather than the technical rule. In the same way, under the criminal administration of justice the technical rules are not to prevail over the substance of the matter. The Deputy Commissioner in trying criminal cases would hold the trial according to the exigency of the case. In a petty case he would follow the summons procedure but in a heinous one he would follow the procedure in a warrant case. The question of a Sessions trial cannot arise because there is no provision for committal proceeding and there are no Sessions Judges in these areas. Therefore, the Deputy Commissioner who was trying the case observed that he was going to

observe the warrant procedure and in the circumstances he was observing the spirit of the Code.

Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware of the technicalities of a complex Code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the Code should apply is a law conceived in the best interests of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of justice in these backward tracts. On the other hand, the imposition of the Code of Criminal Procedure would retard justice, as indeed the Governor-General, the Governor and the other heads of local Government have always thought. We think, therefore, that Art. 21 does not render the Rules of 1937 ineffective.

A similar attempt is made by comparing these Rules with the Criminal Procedure Code applicable in the rest of India. It is contended that this leads to discrimination. We think that the exigency of the situation clearly demands that the Criminal Procedure Code should not apply in this area. It is not discrimination to administer

different laws in different areas. The Presidency towns have got special procedures which do not obtain in other areas. We have known of trial by jury in one part of India for an offence which was not so triable in another. Similarly, what is an offence in one part of India is not an offence in another. Regional differences do not necessarily connote discrimination and laws may be designed for effective justice in different ways in different parts of India if people are not similarly circumstanced. These backward tracts are not found suitable for the application of the Criminal Procedure Code in all its rigour and technicality, and to say that they shall be governed, not by the technical rules of the code but by the substance of such rules is not to discriminate this area against the rest of India.

It is contended that there is discrimination between the Tuensang District and the other two districts of the State because in the other two districts the Code of Criminal Procedure applies. This seems to be stated in the judgment of Mr. Justice C. Sanjeeva Rao Nayudu who proceeded upon a concession of Advocate-General of Nagaland. We have, however, no reason to think that the Advocate-General could have conceded this point. It was made clear to us that there was some mistake and the assumption made by Naidu J. was based on a misapprehension. It is now admitted by Mr. A. K. Sen on behalf of the respondents that the Criminal Procedure Code does not apply to any of the three districts and therefore there is no question of any discrimination between one district and another in Nagaland.

Lastly, it is contended that the Rules themselves allow for discrimination because one officer may take something to be the spirit of the Criminal Procedure Code and another may not. The requirements of the case must determine what should be applied from the Criminal Procedure Code and what should not. The Rules have been purposely made elastic so that different kinds of cases and different situations may be handled

not according to a set pattern but according to the requirements of the situation and the circumstances of the case. In a backward tract the accused is not in a position to defend himself meticulously according to a complex Code. It is, therefore, necessary to leave the Judge free so that he may mould his proceedings to suit the situation and may be able to apply the essential rules on which our administration of justice is based untrammelled by any technical rule unless that rule is essential to further the cause of justice. This would rather lead to less discrimination because each accused would be afforded an opportunity which his case and circumstances require. The Rules of 1937 were designed for an extremely simple and sophisticated society and approximate to the rules of natural justice. It is impossible in such circumstances to think, that because the Judge has more discretion than if he acted under the Criminal Procedure Code or is able to bring different considerations to the aid of administration of justice that there must be discrimination. If a Judge does not apply the spirit of the Code but goes against it or acts in a manner which may be considered to be perverse the High Court will consider his action and set it right. As we said earlier the law has not attempted to control discretion by Rules in this area but has rather left discretion free so that the rule may not hamper the administration of justice. As there is no vested right in procedure the respondents cannot claim that they be tried under the Criminal Procedure Code in this State where the Code is excluded. In such a situation it is difficult to find discrimination." (at pages 851-853)

9. In **Longsan Khongngain v. State of Meghalaya,** (2007) 4 GLT 938, a Division Bench of the Assam High Court stated:

"We have already noticed that the Code of Criminal Procedure has no application to the tribal areas unless made applicable by the appropriate State Government by a notification. A similar declaration is contained under Section 1 of the Code of Civil Procedure also. Therefore, the courts constituted under paragraph 4 of the 6th Schedule either by the District Council or the Regional Council, as the case may be, are not bound by the procedures prescribed under either of the Codes referred to above. Para 4(4):

"A regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating--

(a)……

(b) The procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph."

Stipulates that those courts are to function in accordance with the procedure evolved by the rules made by the District Council or Regional Council as the case may be with the previous approval of the Governor. Such procedures may or may not be available for adjudicating some of the complicated questions arising out of the various laws in force in the tribal areas. The purpose of creating special provisions under the 6th Schedule of the Constitution for the administration of tribal areas is the perception that the tribals are less "sophisticated" than the non-tribals and, therefore, the normal gamut of laws would be too complicated for the tribals to understand and obey. But the tribals are not wholly exempted from the entire body of law made either by the Parliament or the appropriate State Legislature. Some of those laws still operate either wholly or part on the tribals, for example, the Indian Penal Code and the Passports Act which do not recognize any exception in their operation in favour of the tribals. Should an issue arise regarding

the rights and obligations created under the Passports Act between a tribal and an authority created under the Passports Act or should a tribal is accused of offence under the provisions of the Passports Act. The procedure evolved by the Village Courts might become inadequate for an appropriate adjudication of the issues involved in such litigation having regard to the complexity of the matter. In order to meet such a situation, in our view, the Governor is authorized under paragraph 5 of the 6th Schedule to invest such powers as he deems fit, available either in Code of Civil Procedure or Code of Criminal Procedure, either on the District Council or Regional Council or a court constituted by the District Council (Village Court).

Paragraph 5 also authorises the Governor to invest an officer with such powers available under the Cr.P.C. or CPC, as the Governor may deem fit, having regard to the situation that is required to be dealt. Obviously such a power is entrusted by the Governor to meet a situation where the Governor comes to the conclusion that the Village Courts may not be able to meet the requirement of a given situation." (at para 13)

10. Two things become clear. An appeal is provided as a matter of right under Rule 28 of the 1953 Rules and only the spirit of the Code of Civil Procedure applies. This being clear, the law laid down in **A. Venkatasubbiah Naidu v. S. Chellappan & Ors.**, (2000) 7 SCC 695 and **M/s Maria Plasto Pack (P) Ltd. v. Managing Director, U.P. Financial Corporation, Kanpur & Ors.,** AIR 2004 ALL. 310, will not apply as both judgments are based upon the letter and not the

spirit of the Code of Civil Procedure. What applies is Rule 28 of the 1953 Rules which provides a right of appeal in all civil cases from all decisions of Subordinate District Courts. The judgment under appeal states:

> *"7. As already noticed, both the parties were effectively and adequately represented before the appellate court or the trial court by their respective counsel, who cannot said to be unaware of the complexities of the Code of Civil Procedure. Fortunately, no plea is made by the respondents that they have been substantially prejudiced or hampered by the technicalities of complex laws such as the Code of Civil Procedure, which ordinarily bars an appeal from an ex-parte order of injunction. The contention of the learned senior counsel is that as only the spirit of the Code of Civil Procedure is followed in Courts constituted under the Sixth Schedule, the respondents could not be barred from preferring an appeal against the ex-parte order of injunction passed by the trial court. Though the argument appears to be attractive at the first blush, it does not stand closer scrutiny on deeper consideration. In the first place, when it is nobody's case that the parties were unrepresented and were prosecuting the case by themselves without the assistance of legal experts, there can be no bar in applying the letter of the Code of Civil Procedure in a forensic battle fought between parties well and adequately represented by their respective counsel. On the contrary, the application of the letter of the Code of Civil Procedure even in a District Council Courts and Courts subordinate to them constituted under the Sixth Schedule will ensure fairness, certainty, predictability and consistency in the procedure adopted by them. However, if both the parties are not assisted by legal experts, depending upon the facts and circumstances of the case as they develop in the course of trial, such*

Courts, in order to ensure that neither of the parties are hampered by the complexities and technicalities of the Code of Civil Procedure may consider the question as to whether there should be strict application of the Code or not. No doubt, such discretion is expected to be exercised by the Court judiciously and not arbitrarily or whimsically: judicial discretion like any discretionary power is to be exercised in a reasonable manner. In the instant case, I have a sneaking suspicion that both the parties were indulging in forum hunting to obtain favourable order at the expense of the other. I say no more in this behalf. The case must go back to the trial court for consideration of the application for temporary application filed by the petitioner."

11. We fail to understand how the letter of the Civil Procedure Code would apply depending upon whether parties are or are not assisted by legal experts. The Division Bench has unfortunately failed to refer to Rule 28 of the 1953 Rules and has applied the letter of Order 39 Rule 3A read with Order 43 of the Code of Civil Procedure. This is the basic error in the judgment. On the facts of this case, the appeal becomes maintainable because Rule 28 of the 1953 Rules provides for such appeal without any requirement that ordinarily it should be filed only after 30 days. Even otherwise, the judgments relied upon by the respondent state that such appeal is maintainable under the Code of Civil Procedure, but the court may relegate the appellant to the alternative remedy provided – an application to vacate

the stay within 30 days. This in turn does not go to the maintainability of the appeal but only goes to whether discretion ought to be exercised against the appellant if the provisions of Order 39 Rule 3A have been followed. We, therefore, allow the appeal, set aside the judgment dated 27th April, 2012 of the High Court and restore the judgment dated 9th March, 2010 of the District Council Court.

……..J.
(J. Chelameswar)

……..J.
(R.F. Nariman)

New Delhi,
January 28, 2015