MANU/BH/0279/1984

Equivalent Citation: 1984PLJR1119

IN THE HIGH COURT OF PATNA (FULL BENCH)

Appeal from original Order no. 28 of 1982 (R)

Decided On: 11.09.1984

Appellants:**Akhauri Krishna Kumar and Ors.**
Vs.
Respondent:**Mundrika Prasad**

Hon'ble Judges/Coram:
S.S. Sandhawalia, CJ., S. Roy and U.P. Singh, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: M/s N.K. Prasad, A.R.K. Singh and P.K. Prasad

For Respondents/Defendant: M/s J.P. Gupta and B.B. Sinha

JUDGMENT

S.S. Sandhawalia, C.J.

1. What is the precise import of the doctrine of precedent and its binding nature, which admittedly is the linchpin of our justice system;becomes the focal question in this reference by the learned single Judge recording a frontal dissent against the ratio of the Division Bench judgment of this very Court and seeking its reconsideration by a Full Bench. The issue aforesaid stems from an appeal directed against the order of the Judicial Commissioner, Ranchi, whereby he declined to set aside an ex parte order passed earlier by him on the 27th of January, 1981. One Munga Devi is said to have executed a will in respect of her properties on the 3rd of March, 1970, in favour of the Opposite Party. On her death an application under Section 276 of the Indian Succession Act, 1925, for the grant of probate, was moved by the opposite party. Therein notices were ordered to be issued to the appellants in accordance with law and a general notice was also issued. By an order dated the 26th of September, 1980, the service on the original appellant No. 1 (Akhauri Raghubir Lal) was considered as sufficient, as the acknowledgement due receipt sent to him was received back duly signed on his behalf. Later, by an order dated the 4th of December, 1980, the learned Judicial Commissioner directed that service on Appellant No. 2 was also sufficient under Order V Rule 19A of the Code of Civil Procedure. The case was thereafter posted for hearing on December 18, 1980, and, again on January 22, 1981, and, since nobody appeared on behalf of the appellants, proceedings against then were taken ex parte and evidence was recorded on behalf of the respondent, and the case was directed to be listed for orders on January 27, 1981. Meanwhile, after court hours on the 22nd January, 1981, an application was moved on behalf of original appellant No. 1 for permission to contest the case, and, another such application was moved on the next date also, but both of them were rejected by the learned Judicial Commissioner on the 27th of January, 1981, and, by the same order he directed issue of probate in favour of the respondent.

2. The appellants then applied under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte order dated the 27th of January, 1981. At the time of

hearing, no evidence was led by the parties, and the Judicial Commissioner took the view that there was no adequate material before him to establish that there was sufficient cause for setting aside the ex parte order and dismissed the application on the 27th of January, 1982. The present appeal has been preferred against the said order.

3. When it camp up before the learned Single Judge, reliance on behalf of the appellants was squarely placed on a Division Bench judgment of this Court in the Union of India v. Shri laxmi Oil Mills (1984 BBCJ 137). The learned Single Judge, however, relying on R.S. Bhatnagar v. Bhakt Sajjan (AIR 1978 Allahabad 139), and quoting therefrom, has observed as under:-

> True it is that the Division Bench in Union of India v. Sri Laxmi Oil Mills (supri) did not take into consideration the different between illegality and irregularity in the service of summons as it was not dealing the case falling under second provision of Order IX, Rule 13, of the Code. With great respect to the Hon'ble Judges who decided the case of Union of India v. Sri Laxmi Oil Mills (supra), I am constrained to say that it does not lay down the correct law. I, therefore refer the following questions for decision by a Full Bench :

4. Before us an objection has been taken at the very threshold by the learned Counsel for the appellant that this reference to the Full Bench is not competent. It was submitted that the learned Single Judge was bound to follow the decision of the larger Division Bench in the Union of India v. Sri laxmi CU Mills (supra), and, in refusing to do so, there has been a breach of judicial discipline, which should not be easily countenanced.

5. Before us, very fairly, the admitted and common position taken by the learned Counsel for the parties is that undoubtedly, the ratio of the Union of India v. Sri Laxmi oil Mills (supra) is attracted to the facts. Now, once it is so, a fortiori the said judgment was binding on the learned Single Judge. What is the precise import of this binding nature, seems now two need no exhaustive dissertation in the context of Anglo Saxon Jurisprudence. More than to. centuries ago, Blackstone in his celebrated commentaries elaborated the rule of the binding nature of precedent in the following terms :-

> It is an established rule to abide by former precedents when the same points come again into litigation : as well to keep the scale of justice even and steady and not likely to waver with every Judge's new opinion, as also because the law in that case being solemnly declared and determined, what before was uncertain is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter or vary from according to his private sentiments.

6. It would appear that the aforesaid rule, which is but a reiteration of a principle which was held to be axiomatic much earlier, has been unhesitatingly followed in Great Britam, so much as, that the superior Courts of England have held themselves bound by their own earlier decisions irrespective of the number of Judges rendering the same. In young v. Bristol Aeroplane Co. Ltd. [1944 (2) All England Law Reports 293] it was settled beyond doubt that the Court of Appeal was bound to follow previous decisions of its own, irrespective of the fact, whether the judgment was of a Division Bench or of a Full Court. It was in conformance to this very discipline that the House of Lords, which is the final Court, was so inflexibly bound by its earlier

decisions that the same could be corrected only by an Act of Parliament and not otherwise. However, being the final Court, a limited change from this rigid rule was made in the following terms by the Practice Statement (Judicial Precedent) 1966 (1) W.L.R. 1234 :-

> Lord Gardiner L.C. : Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rule.
>
> Their Lordships nevertheless recognise that too rigit adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
>
> In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.
>
> This announcement is not intended to affect the use of precedent elsewhere than in this House.

7. Now the true approach to a binding precedent is illustrated by the celebrated words of Lord Justice Buckley in Produce Brokers Co. ltd v Otympic Oil & Cake Co. Ltd; ((1916) I Appeal Cases 314), as under :-

> I am unable to adduce any reason to show that the decision which I am about to pronounce is right. On the contrary, if I were free to follow my own opinion, my own powers of reasoning such as they are, I should say that it is wrong. But, I am bound by authority "which, of course, it is my duty to follow and, following authority, I feel bound to pronounce the judgment which I am about to deliver.

Similarly, Lord Cozon Hardy, Master of Rolls, in Velazunez Limited v. Inland Revenue Commissioners ((1914) 3 K.B. 458) had the occasion to observe as follows :-

> But there is one rule by which, of course, we are bound to abide that when there has been a decision of this Court upon a question of principle it is not right for this Court whatever its own views may be, to depart from that decision. There would otherwise be no finality in the law. If it is contended that the decision is wrong then the proper course is to go to the ultimate tribunal, the House of Lords. who have power to settle the law and hold that the decision which is binding upon us is not good law.

8. As in England, so in India, the legal position is identical, and, indeed, it has now been placed at a higher pedestal by giving it a constitutional status. Article 141 now promulgates as under :-

> **141.** Law declared by Supreme Court to be binding on all Courts
>
> The law declared by the Supreme Court shall be binding on all courts within

the territory of India.

In Tribhavandas Purshottamdas Thakur v. Ratlilal Patel and others (MANU/SC/0345/1967 : AIR 1968 SC 372), whilst settling all veiled doubts raised by Raju, Jain the High Court, with regard to the theory of precedents, it was held :-

> Precedents which enunciate rules of law from the foundation of administration of justice under our system. It has been held time and again that a single Judge of a High Court is ordinarily bound to accept as correct judgments of Courts of co-ordinate jurisdiction and of Division Benches and of the Full Benches of his Court and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainly in the law.

Even earlier in A.Raghavama y. A Chenchamma and another (MANU/SC/0250/1963 : AIR 1964 SC 136), it was held as well settled that even a Division Bench was bound by the decision of another Division Bench. It would thus follow that once a precedent is held to be a binding one, then no deviation therefrom is permissible within the judicial policy except in the well accepted categories of cases enumerated hereinafter later.

9. It is equally necessary to highlight that the binding nature of precedents generally and of larger Benches in particular, is the kingpin of our judicial system. It is the bond that holds together what otherwise might well become a thicket of individualistic opinions resulting in a virtual judicial anarchy. This is a self imposed discipline which is so settled in practice as to have hardened into the rule of law and is rightly the envy of other schools of law. Because of the legal position here being axiomatic and well settled, it is unnecessary to elaborate the issue on principle. In Jai Kaur & others vs. Sher Singh & others (MANU/SC/0300/1960 : AIR 1960 SC 1118) their Lordships gravely frowned on any deviation from the law once settled by the larger Bench and observed that thereafter any previous decision on the same point by a smaller Bench contrary thereto would have to be ignored, and, particularly, with regard to Division Benches, it was observed :-

> If, as we pointed out there, considerations of judicial decorum and legal propriety require that Division Benches should not themselves pronounce decisions of other" Division Benches to be wrong, such considerations should stand even more firmly in the way of Division Benches disagreeing, with a previous decision of the Full Bench of the same Court.

10. Now, apart from the larger Benches and the precedents of the superior Courts, it would appear that even judgments of the Benches of the same High Court in a limited way are binding in the sense that the judgment cannot be rendered contrary to the earlier decision of a co-equal Bench. At the highest, only an equivalem Bench can differ from another and seek reconsideration of the same by a larger Bench. It is unnecessary to quote and multiply precedents on the point and reference may instructively be made to Mahadeo Lal Kanodia v. The Administrator General of West Bengal (MANU/SC/0294/1960 : AIR 1960 SC 936), Jaisri Sahu v. Rajedewan Dubey and others (MANU/SC/0371/1961 : AIR 1962 SC 83), Lala Sri Bhagwan and another v. Ram Chand and another (MANU/SC/0320/1965 : AIR 1965 SC 1767), Meganlal Chhagganlal (Private) Limited v. The Municipal Corporation of Greater Bombay and others (MANU/SC/0052/1974 : AIR 1974 SC 2009), Chetu Ram v. Asa Nand (1962 Punjab Law Reports 235), and, C Varadarajulu Naidu v. Baby Ammal and another

(MANU/TN/0278/1963 : AIR 1964 Mad 448).

11. From the above, it would follow as a settled principle that the law specifically laid down by the larger Bench is binding upon the smaller Benches within the same High Court, and, any and every veiled doubt with regard to the ratio does not justify the reconsideration thereof by a larger Bench and thus put the issue in a ferment afresh. The ratios of the larger Benches are and should be rested on surer foundations and are not to be blown away by every sidewind. It is only within the narrowest fields that the judgment of the larger Bench can be questioned for reconsideration. One of the obvious reasons is that where it is unequivocally manifest that its ratio has been impliedly over ruled or whittled down by a subsequent judgment of a superior count or by a larger Bench of the same Court. Secondly, where it can be held with certainty that a co-equal Bench has laid the law directly contrary to the same, and, thirdly, where it can be conclusively said that the judgment of the larger Bench was rendered per incuriam by altogether failing to take notice of a clear cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a smaller Bench may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be neither dogmatic nor exhaustive, yet the aforesaid categories are admittedly the well accepted ones, in which an otherwise binding precedent may be suggested for reconsideration.

12. However, it is equally apt to elaborate what should not be a valid ground for questioning or reconsidering the law settled by a larger Bench. The very use of the word 'binding' would indicate that it would hold the field despite the fact that the Bench following the same may not be agreeable with that view. It is the necessary discipline of the law that file judgments of the superior courts and of larger Benches have to be followed unhesitatingly, whatever doubt one may individually entertain about their correctness. The reasoning for this is plain. To seek an universal intellectual unanimity is an ideal which obviously is too Utopain to achieve. Therefore, the logic and the rationale which underlie the ratio of the larger Bench are not matters open for reconsideration. Negatively put, therefore, the challenge to the rationale and reasoning of a larger Bench is not a valid ground for unsettling it and seeking a reopening and re-examination of the same: thus putting the question in a ferment afresh.

13. It deserves pointed notice that the learned Counsel for the respondent was himself fair enough to say that he could not support the reference and judicial discipline enjoins the single Judge to follow the law laid down by the Division Bench. To finally conclude, it has to be inevitably held that the ratio of the Union of India v. Shri Laxmi Oil Mills (supra) was binding upon the learned Single Judge and he could not doubt its correctness and dissent therefrom. The case does not come within the parameters were a smaller Bench could even remotely seek the re-consideration of the law laid down. In this situation, it would follow that the present reference does not arise and the case has consequently to be sent back to the learned Single Judge for a decision on merits in accordance with law.