

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

TUESDAY, THE 27TH DAY OF JUNE 2023 / 6TH ASHADHA, 1945

OP(C) NO. 1977 OF 2022

AGAINST THE ORDER DATED 15/06/2022 IN C.S.No.1 OF 2021 OF
COMMERCIAL COURT (PRINCIPAL SUB COURT) , KOTTAYAM

PETITIONER/DEFENDANT:

ALEX G. MURICKEN
AGED 49 YEARS
S/O. LATE C.V. GEORGE G. MURICKEN MURICKEN TRADING
COMPANY HEAD OFFICE, KURUPPANTHARA KOTTAYAM,
PIN - 686604

BY ADVS.
C.HARIKUMAR
VIZZY GEORGE KOKKAT
SREEMUKUND R.
SANDRA SUNNY
ARUN KUMAR M.A

RESPONDENTS/PLAINTIFFS:

1 MURICKENS MARKETING SYSTEM LLP
REPRESENTED BY DESIGNATED PARTNER, GEORGE G. MURICKEN
MURICKENS BUILDINGS, HEAD OFFICE, KADUTHURUTHY
KOTTAYAM, PIN - 686604

2 GEORGE G. MURICKEN
AGED 54 YEARS
S/O. LATE C.V. GEORGE G. MURICKEN MURICKENS HOUSE,
KADUTHURUTHY, KOTTAYAM, PIN - 686604

BY ADVS.
LAKSHMI NARAYAN R.
N.V.SANDHYA
DHANUJA M.S
R.RANJANIE

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 27.06.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

JUDGMENT

The prime question came up for consideration as to whether there is any retrospective operation of a notification issued under Section 6 of the Commercial Courts Act, 2015 enhancing the pecuniary jurisdiction of Commercial Court to rupees ten lakhs from rupees three lakhs and whether the jurisdiction of the Commercial Court would stand ousted in view of the enhancement of specified value by the subsequent notification pertaining to a matter pending consideration. The objection raised was rejected by the Commercial Court under Ext.P5 order, which is under challenge.

2. Extensive arguments were made by the learned Counsel for the petitioner Sri.Harikumar and relied on the latest decision of the Apex Court in **Neena Aneja and Another vs. Jaiprakash Associates Ltd.**

[(2022) 2 SCC 161]. The Apex Court had elaborately considered the issue by referring to various other decisions on the point i.e. **New India Assurance Co.Ltd vs. Shanti Misra [(1975) 2 SCC 840]** and **Om Prakash Agarwal v. Vishan Dayal Rajpoot [(2019) 14 SCC 526]**.

3. To resolve the issue, it is necessary to have an understanding with respect to the application of what actually amounts to "repeal" and "saving" and the retrospective application to an amendment or repeal of provision. The expressions "repeal" and "saving", though sometimes used conjointly to indicate the legislative intention behind a new legislation or a special enactment, both are distinct in its application, but sometimes may have an overlapping effect when read conjointly to gather the legislative intention and its effect on a new legislation or a special enactment in reference to the earlier law on the point either under an old enactment or a mischief, if any, sought to be cured by the new enactment/special

enactment or by notification. The "effect of repeal" can be gathered from Section 6 of the General Clauses Act, which is extracted below for reference:

"6. Effect of repeal

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be

imposed as if the repealing Act or Regulation had not been passed.”

4. The effect of repeal would always stand subject to Section 6 of the General Clauses Act, 1897, which says that unless a contrary intention appears from the new enactment, the repeal shall not revive anything which was not in existence or in force at the time of enactment, the effect of operation of any previous enactment and anything done or suffered thereunder. It will not affect any right, privilege or obligation accrued under the earlier enactment, any penalty, forfeiture or punishment, if any incurred or any investigation, legal proceedings in respect of any right, privilege, obligation, liability etc. or any investigation, legal proceedings or remedy may be instituted and continued or enforced as if the repealing Act or Regulation had not been passed. Necessarily, the mandate of Section 6 of the General Clauses Act is to keep all the pending proceedings unaffected which was commenced under the unrepealed

provisions, unless a contrary intention is expressed (**Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co.** [(2001) 8 SCC 397]). The objective of the provision is to ensure protection of any right or privilege acquired under the repealed Act, unless it is either expressly or impliedly excluded (**Gurcharan Singh v. Yashwant Singh (AIR 1992 SC 180)**). The effect of repeal was once again elaborately considered by the Apex Court in **Neena Aneja's** case (supra) while dealing with enhancement of pecuniary jurisdiction of consumer forum by virtue of a new enactment of the year 2019 by repealing the provision of 1986 Act and laid down the legal position that the proceedings instituted before the commencement of 2019 Act (new Act) would continue before the fora corresponding to those under the 1986 Act (old Act) and not to be transferred in terms of pecuniary jurisdiction set for the fora established under the 2019 Act. It was also made clear and laid down that the general rule of retrospective application may not come into play

when a contrary intention emerges from the repealing or amending statute. Paragraph 72 of the said judgment is extracted below for reference:

72. In considering the myriad precedents that have interpreted the impact of a change in forum on pending proceedings and retrospectivity – a clear position of law has emerged : a change in forum lies in the realm of procedure. Accordingly, in compliance with the tenets of statutory interpretation applicable to procedural law, amendments on matters of procedure are retrospective, unless a contrary intention emerges from the statute. This position emerges from the decisions in *New India Assurance Co. Ltd. v. Shanti Misra*, [(1975) 2 SCC 840], *Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto*, [(1979) 1 SCC 92], *Hitendra Vishnu Thakur v. State of Maharashtra* [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087], *Ramesh Kumar Soni v. State of M.P.*, [(2013) 14 SCC 696 : (2014) 4 SCC (Cri) 340] and *Sudhir G. Angur v. M. Sanjeev* [(2006) 1 SCC 141] . More recently, this position has been noted in a three-Judge Bench decision of this Court in *Manish Kumar v. Union of India* [(2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50] . However, there was a deviation by a two-Judge Bench decision of this Court in *Dhadi Sahu* , which overlooked the decision of a larger three-Judge Bench in *New India Assurance* and of a coordinate two-Judge Bench in *Maria Cristina*. The decision in *Dhadi Sahu* propounded a position that :

"21. ...no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes

vested when the proceedings are initiated in the tribunal."

(emphasis supplied)

In taking this view, the two-Judge Bench did not consider binding decisions. *Dhadi Sahu* failed to consider that the saving of pending proceedings in *Mohd. Idris v. Sat Narain* [(1966) 3 SCR 15 : AIR 1966 SC 1499] and *Manujendra Dutt v. Purnedu Prosad Roy Chowdhury* [(1967) 1 SCR 475 : AIR 1967 SC 1419] was a saving of vested rights of the litigants that were being impacted by the repealing Acts therein, and not because a right to forum is accrued once proceedings have been initiated. Thereafter, a line of decisions followed *Dhadi Sahu*, to hold that a litigant has a crystallised right to a forum once proceedings have been initiated. A litigant's vested rights (including the right to an appeal) prior to the amendment or repeal are undoubtedly saved, in addition to substantive rights envisaged under Section 6 of the General Clauses Act. This protection does not extend to pure matters of procedure. Repeals or amendments that effect changes in forum would ordinarily affect pending proceedings, unless a contrary intention appears from the repealing or amending statute."

5. Ultimately, the legal position was summarized to the effect that the proceedings instituted before the commencement of the new Act would continue before the fora corresponding to those under the old Act and not to be transferred in terms of pecuniary jurisdiction set for the fora

established under the new Act with a direction that all proceedings instituted before the commencement of new Act under the old Act shall continue to be heard by the fora corresponding to those designated under the old Act and not to be transferred in terms of a new pecuniary limits established under the new Act.

6. An identical question also came up before a Constitutional Bench of the Apex Court in **Mohd. Idris v. Sat Narain (AIR 1966 SC 1499)** and laid down that "irrespective of a repealing Act, the proceedings which were initiated before the competent court and continued as on the date of repealing Act either before the trial court or before the appellate court would stand outside the purview of repealing Act" by taking a harmonious consideration of the effect of repealing Act in tune with Section 6 of U.P. General Clauses Act, 1897, which is *pari materia* with the corresponding provision of the General Clauses Act. But the position of law would be different regarding a cause

of action which had arisen prior to the amendment or repealing Act, if it was not put up in action before any competent court or forum prior to that. A clear distinction can be drawn based on the cause of action which had arisen prior to the amendment/repealing Act, which was not put up in action before any competent court or forum till that time. The distinction with respect to the question of retrospective operation can very well be gathered from the legal position settled by a three Judge Bench of the Apex Court in **New India Assurance Co.'s** case (supra). When no legal action was taken up or initiated before any competent court or authority and only a cause of action had arisen prior to the commencement of either the repealing Act or enhancement of pecuniary jurisdiction, the normal rule is that it will have retrospective operation to a cause of action which had arisen even prior to the commencement of the repealing Act or enhancement of pecuniary jurisdiction or any forum change and proceedings has to be initiated as per the new forum

even if the cause of action or right of action accrued prior to the change of forum or change in pecuniary jurisdiction. But in a pending matter, which was initiated prior to the change of pecuniary jurisdiction or forum, would not debar the party from proceeding with the action in that court or the forum, wherein it was originally instituted, though the pecuniary jurisdiction was altered either by a special enactment or by a notification during its pendency. Necessarily, there cannot be any transfer for want of pecuniary jurisdiction on account of subsequent alteration/amendment/repeal.

7. In **Om Prakash Agarwals's** case (supra) the Apex Court had considered the question of retrospective application with respect to a matter which has merged in a decree and considered the application of Section 21 of the Code of Civil Procedure, which debars the party from taking the question as to pecuniary or territorial jurisdiction after the culmination of the suit in a decree, if it was not taken up at the earliest possible

opportunity at the court of first instance. In fact, in that decision, the earlier decision rendered by a Constitutional Bench of the Apex Court in **Mohd. Idris v. Sat Narain (AIR 1966 SC 1499)** was not referred to and what is mainly focused is the application of Section 21 C.P.C..and hence standing on a different pedestal.

8. In the instant case, by a notification under Section 6 of the Commercial Courts Act, 2015, the specified value was enhanced from rupees three lakhs to rupees ten lakhs. Admittedly, at that time, the present proceeding was pending before the Commercial Court based on the earlier "specified value" by virtue of Section 6 of the Act and the pecuniary jurisdiction thereof. Necessarily, the subsequent notification enhancing the specified value, in reference to Section 6 will not have any retrospective effect to a pending matter, which was lawfully initiated or transferred to a Commercial Court on its establishment. But the legal position would be different if it is pertaining to a cause of

action, which had arisen before the amended provision/repealing provision, if it was not brought up in action before any competent court or authority till that time and as against such cause of action, there would be a retrospective application of the provision/repealing Act or the amendment. Hence, there is no much merits in the objection raised as to the jurisdiction of the Commercial Court to proceed with the action on a matter which was already initiated prior to the commencement of notification. Hence, the issue is answered accordingly.

9. At the fag end of the argument, the learned counsel for the petitioner fairly submitted that final arguments were already advanced before the Commercial Court in part. Accordingly, there will be a direction to the Commercial Court to take up the matter emergently and dispose of the same within a time schedule of three weeks from the next posting date after affording a reasonable opportunity to both the parties to advance their respective

arguments on the merits and demerits of the case.

The O.P.(C) will stand dismissed.

Sd/-

P . SOMARAJAN
JUDGE

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APPENDIX OF OP(C) 1977/2022

PETITIONER'S EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE PLAINT IN C.S.NO 1
OF 2021 ON THE FILE OF THE COMMERCIAL
COURT (PRINCIPAL SUB COURT), KOTTAYAM
FILED BY THE RESPONDENTS DATED 10.04.2019
- EXHIBIT P2 THE TRUE COPY OF THE GOVERNMENT ORDER
(MS.) NO 51/2020/HOME DATED 24.02.2020
- EXHIBIT P3 THE TRUE COPY OF THE GOVERNMENT ORDER
(MS.) NO 53/2022/HOME DATED 18.03.2022
- EXHIBIT P4 THE TRUE COPY OF THE EXTRACT OF
PROCEEDING DATED 19.05.2022 FROM THE CASE
STATUS PAGE OF ECOURTS.GOV.IN WEBSITE OF
THE COMMERCIAL COURT (PRINCIPAL SUB
COURT), KOTTAYAM
- EXHIBIT P5 THE TRUE COPY OF THE ORDER IN C.S.NO 1 OF
2021 PASSED BY THE COMMERCIAL COURT
(PRINCIPAL SUB COURT), KOTTAYAM DATED
15.06.2022
- EXHIBIT P6 THE TRUE COPY OF JUDGMENT IN TR.P.(C.)NO
358 OF 2022 PASSED BY THIS HON'BLE COURT
DATED 26.07.2022
- EXHIBIT P7 THE TRUE COPY OF ORDER IN TR.APPEAL
(C.)NO 13 OF 2022 PASSED BY THIS HON'BLE
COURT DATED 11.10.2022

/TRUE COPY/

PS TO JUDGE