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CASE COMMENT ON
NALINAKHYA BYSACK V. SHYAM SUNDER HALDAR
& ORS. (AIR 1953 SC 148)

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BA LLB – B (2019-2024)

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Through the process of interpretation, one finds the true and correct intention of the legislative body, put forth in the form of statutes. It is a known fact that the Indian government is divided into three sections, namely the 'Legislature', 'Executive' and 'Judiciary'. Laws are laid down by the Legislature and it is the job of the Judiciary to construe the meaning of the law as per the intention of the former. This process has worked out so far and helps in keeping checks and balances between both these sections. However, it is not always the case. There are instances where the Judiciary may have interpreted the statute, not in accordance with the intention of the Legislature.

The need behind interpretation of a law arises when its language is ambiguous or unclear or when there exists more than a single meaning. "*If the wording is clear and regulated, there is no need for clarification*".¹ However, there exists a constraint on the Judges which limits their creativity as well as reason, while interpreting a law. Therefore, certain presumptions are made by the Judiciary when faced with a difficulty in interpreting statutes to ascertain the true intention of the Legislature. One such presumption is that the Legislature does not commit any mistakes or make omissions while laying down a statute. As per this, Courts should assign an ordinary meaning to a statute which is clear rather than presume that the Legislature has made a mistake or an omission. This has been discussed in great detail in the case of *Nalinakhya Bysack*, which shall be covered below.

The respondents were monthly tenants under the appellant. One day, the appellant gave notice to quit their premises, which the respondent failed to comply with. This led to an institution of

¹ *R. S. Nayak v A. R. Antulay* AIR 1988 SC 1531

proceedings under Chapter VII of the Presidency Small Cause Courts Act, 1882² for the respondents' eviction on the allegation that rent has not been paid for three months consecutively with respect to Section 12(3) of the West Bengal Premises Rent Control Act, 1948³. A written statement was filed by the respondents denying the same, however, on the day of the hearing, they did not appear. So, the matter was heard *ex parte*, and the Court granted an order in favour of the appellant, thereby directing them the delivery of possession of the said premises.

In the meantime, the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 came into force, which motivated the respondents to file an application under Section 18⁴ to vacate the abovementioned order. Consequently, the trial court ordered the respondents to pay all arrears with interest, which they did, and set aside the order of decree for possession. This led the appellant to move to the High Court under Section 115 of CPC⁵, wherein the application was dismissed as the Court followed the precedent set in *Rai Bahadur Atulya Dhan Banerjee v Sudhangsu Bhusan Dutta*⁶. Then, an appeal was filed in the Supreme Court by the appellant. The issue for consideration was whether Section 18(1) of the 1950 Act would be applicable to an order passed for possession made under Section 43 of the 1882 Act⁷. The Court also addressed the issue of whether or not the marginal note might be used in interpreting the clause.

In the case of Rai Bahadur, as stated above, it was held that the expression “*decree for recovery of possession*” in Section 18(1) would also include an “*order for possession*” made under Section 43 and this precedent was followed by many Benches of the same Court, without any further discussion. However, the Supreme Court was unable to arrive at that conclusion. While construing Section 18(1), it was established that a “*decree for recovery of possession*” should be treated differently from an “*order of possession*”. This is because this provision expressly attracts the 1948 Act, according to which, there is no need to give an extended meaning to “decree”, to include “order” within its ambit and rather should be dealt with separately. It was also said that whatever the meaning of the word “decree” may be in the 1948 Act, it shall be immaterial while construing the 1950 Act. If attributed to Section 18(1), the definition of “decree” provided by

² Presidency Small Cause Courts Act 1882, chap VII

³ West Bengal Premises Rent Control Act 1948, s 12(3)

⁴ West Bengal Premises Rent Control (Temporary Provisions) Act 1950, s 18

⁵ Code of Civil Procedure 1908, s 115

⁶ [1951] 55 OWN 343

⁷ Presidency Small Cause Courts Act 1882, s 43

Section 26⁸ and Order 4 Rule 1 of the CPC⁹ is simply inapplicable to an "order for possession" under Section 43.

It was further held that the marginal note could not govern the meaning of the provisions' entire body, if the language of the latter is clear. "*If the language of the section is clear then it may be that there is an accidental slip in the marginal note rather than that the marginal note is correct and the accidental slip is in the body of the section itself*".¹⁰ As per the Court, the marginal note should not be allowed to create obscurity in the provision, just because it has not been carefully drafted.

Lastly, it was argued that if "decree" is strictly interpreted, then it shall open a Pandora's box by giving rise to disquieting results wherein poor tenants would be deprived from getting any benefits of Section 18(1), when faced with an "order for possession", thereby frustrating the intention of the Legislature. Such an argument presupposed that the Legislature desired to offer remedy to each and every tenant who had been the target of the decrees or orders of possession. However, the language of the said provisions clearly intends to provide relief only to a certain section of tenants that too in specific circumstances. By referring to a few cases¹¹, it was held by the Court that "*it is not competent to any court to proceed upon the assumption that the legislature has made a mistake...even if there is some defect in the phraseology used by the legislature the court cannot...aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is... for others than the courts to remedy the defect*".¹² Thus, the Court decided the case in favour of the appellant and allowed the appeal. It said that it is not right to give meaning to the word "decree" other than the one which is ordinarily accepted.

Arie Rosen, in his work, "*Statutory Interpretation and the Many Virtues of Legislation*"¹³, talks about how the imperial commitment of an interpretive approach resting on a "*wholesale account of legislation*" should be rejected. All statutes should not be subjected to a single methodology

⁸ Code of Civil Procedure 1908, s 26

⁹ Code of Civil Procedure 1908, O 4 r 1

¹⁰ *Nalinakhya Bysack v Shyam Sunder Haldar & Ors.* AIR 1953 SC 148 [5]

¹¹ *Commissioner for Special Purposes of Income Tax v Pemsal* [1891] AC 531 [549], *Crawford v Spooner* [1846] 13 ER 582, *Hansraj Gupta v Official Liquidator of Dehra Dun-Mussoorie Electric Tramway Co. Ltd.* AIR [1933] PC 63

¹² *Nalinakhya Bysack v Shyam Sunder Haldar & Ors.* AIR 1953 SC 148 [9]

¹³ Arie Rosen, 'Statutory Interpretation and the Many Virtues of Legislation' [2017] 37(1) Oxf J Leg Stud 134-62

when it comes to interpretation, be it, “textualism”, “intentionalism” or the variety of a “correctness-based approach”. It is argued by the author that interpretation should be limited to ‘what actually goes about in legislative assemblies’ rather than following ‘an abstract idealised account of legislation’. There is intent behind the making of every statute, which is the defined purpose of it, thus, interpretation has a purpose.

According to Richard Ekins, debates are just as essential as the end result and law should not be perceived as a mere transactional idea.¹⁴ All the schools believe in respecting the legislative intent because a lot goes behind the formulation of statutes. In this case, the High Court applied a textualist approach to the marginal note of Section 18(1) and ignored the legislative intent behind the body of the provision itself. The assumption with respect to the intent of the Legislature was incorrect as relief was not to be provided to all the tenants but to a certain section under specific circumstances.

The Supreme Court applied the ‘control-maximising approach’¹⁵, according to which, a strict division of labour is emphasized on, between the author and the interpreter. It is insisted that the techniques of interpretation should be used in way so as to maximise the author’s control over the statute’s content. The Court recognised the correct legislative intent by prioritising the body of the provision over its marginal note and reinstating the presumption that the Legislature does not commit mistakes, thereby maximising the Legislature’s control over the provision.

If truth is interrogated, the exact meaning of law can be known.

Law has a dynamic nature, and it is not always necessary that this true meaning can be found from a plain reading of the text as one could come up with different conclusions. According to Ronald Dworkin, in “*Law as Interpretation*”¹⁶, there is only one true meaning of law, however, there exists many possible interpretations. The most suitable one should be applied by judges depending on the specific facts of the case presented before them. Dworkin favours the evaluative analysis over the descriptive one, and states that law should be evaluated where there is truth in the description. However, as per the principle of identity, such evaluation should not alter the text and its identity should be maintained throughout. The High Court did commit a mistake by trying

¹⁴ R Ekins, ‘The Nature of Legislative Intent’ [2012] Oxf Uni Press <<https://doi.org/10.1093/acprof:oso/9780199646999.003.0008>> accessed 21 April 2023

¹⁵ Arie Rosen, ‘Statutory Interpretation and the Many Virtues of Legislation’ [2017] 37(1) Oxf J Leg Stud 134-62

¹⁶ Ronald Dworkin, ‘Law as Interpretation’ [1982] 9(1) The Politics of Interpretation 179-200

to modify the text and changing the identity of the said statute.

Finally, the marginal note provided in Section 18 acts as an internal aid to the provision. However, rather than helping or assisting the Judge, it created ambiguity as it was not carefully drafted. Thus, if the provision itself is sufficient and clear in order to understand the intention of the Legislature, then there is no need to base the decision by referring to the marginal note. The Supreme Court applied the principle of “*ut res magis valeat quam pereat*” which means “*it is better for a thing to have an effect than to be made void*” and prioritised the body and language of the provision over a side note as the contradiction in the meaning was leading to a failure in construing the true intention of the Legislature.

In my opinion, the Court set the right precedent for the future. One cannot modify the statute by adding or subtracting any word mentioned in the body. It should be read as a whole rather than omitting some parts of it to suit a certain narrative. The court has rightly applied the legal maxim “*a verbis legis non est recedendum*”, which means “*from the words of law, there must be no departure*”. It is not within the Judiciary’s purview to assume that the Legislature has made a mistake or read words into a statute, which would produce an intelligible result on its literal reading, as opined in many cases after *Nalinakhya*.¹⁷ It is not just about the usage of textual or literal interpretation, but a statute has to be construed in a certain way where there is a general construction of words.

“A judge must not alter the material of which it is woven, but he can and should iron out the creases.”¹⁸

¹⁷ *Competition Commission of India v Steel Authority of India Ltd.* [2010] 10 SCC 744, *Dadi Jagannadham v Jammulu Ramulu* [2001] 7 SCC 71, *State of Gujarat and Others v Dilipbhai Nathjibhai Patel and Another* [1998] 3 SCC 234

¹⁸ *Seaford Court Estates Ltd. v Asher* [1949] 2 KB 481