

(1999) 03 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 5243 of 1998

Braham Singh

APPELLANT

Vs

Ajit Singh

RESPONDENT

Date of Decision: March 23, 1999**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 17A, 115

Citation: (1999) 3 CivCC 109 : (1999) 123 PLR 32 : (1999) 3 RCR(Civil) 76**Hon'ble Judges:** V.S. Aggarwal, J**Bench:** Single Bench**Advocate:** P.S. Rana, for the Appellant; Ram Chander, for the Respondent**Final Decision:** Allowed

Judgement

V.S. Aggarwal, J.

The present revision petition has been filed by Braham Singh, hereinafter described as the petitioner" directed against the order passed by the learned Civil Judge (Junior Division), Karnal dated 30.10.1998. By virtue of the impugned order, the learned trial Court dismissed the application filed by the petitioner under order 18 Rule 17-A of the CPC for short "the Code".

2. The relevant facts are that Ajit Singh has filed a Civil suit for mandatory injunction. The dispute relates to the alleged encroachment of certain portion of the property in dispute. The said suit was being contested. During the pendency of the suit, an application was filed under Order 18 Rule 17-A of the Code asserting that another suit titled Ajit Singh v. Braham Singh is also pending. Both the suits were consolidated. The evidence of the parties had already been recorded in the case titled Braham Singh v. Harbans Singh. Two demarcation reports have been produced. The case of Ajit Singh was that Braham Singh had constructed the stair-case in his land i.e. of Ajit Singh. Braham Singh contended that he had constructed the stair-case in his own land. It was prayed that the petitioner should

be allowed to place on record a copy of the demarcation report dated 18.8.1998. The application as such was contested. A preliminary objection was raised that it was not maintainable. It was further alleged that on 20.1.1993 Shri Sant Parkash, Sub Judge, 1st Class, Karnal, had dismissed the earlier application filed by Braham Singh for the appointment of Local Commissioner and the application as such is not maintainable, it was further alleged that the said document is not relevant and in any case it should not be allowed to be produced.

3. The learned trial Court taking note of Order 18 Rule 17-A of the Code held that after due diligence such an evidence can be produced and that the petitioner has already led the evidence. The application accordingly was dismissed.

Aggrieved by the same, present revision petition has been filed.

4. On behalf of the respondent, a preliminary objection has been taken that a revision petition against such an order will not be maintainable. Sub-section (1) to Section 115 of the Code after amendment of 1976 reads as under :-

115. Revision :- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears :-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where -

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court, subordinate thereto.

Explanation :- In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding".

5. It is abundantly clear from the perusal of the above quoted provision that while the High Court can call for the record of the Subordinate Courts and vary the order

where the Court has exercised the jurisdiction not vested in it by law or has acted illegally. But the proviso makes it clear that no such order shall be reversed in revision when the order, if it had been made in favour of the party applying of the revision, would have finally disposed of the suit or the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. In this process, certain restrictions have been imposed by the proviso on orders which can be revised by the High Court.

6. On behalf of the respondent, reliance was placed on the decision rendered by this Court in the case of Smt. Parmeshwari Devi and Ors. v. Mohinder Kumar and Ors. (19983) 120 PL.R 558. It was held that where an application under Order 18 Rule 17-A is dismissed, it cannot be challenged by filing a revision petition against it u/s 115 of the Code.

7. On the contrary, attention of the Court was being drawn to the decision of the Full Bench in the case of Sadhu Ram Bail Ram and Anr. v. Ghansham Dass Madan Lal and Ors. AIR 1975 P&H 174. This was a decision u/s 115 of the Code as it stood before the amendment. The expression "case decided" came up for consideration and the decision rendered by the Lahore High Court in the case of Bibi Gurdevi represented by Prithvi Raj Khosla v. Chaudhri Mohammad Bakhsh AIR 1943 Lah 65 was looked with approval wherein it was held as under -

"I would accordingly hold that from the stand point of language alone, the word "case" is wide enough to include decision on any matter in controversy affecting the rights of the parties to a suit. This interpretation is supported by the dictionary meaning of the word, by the sense in which it is used in some other sections of the Code itself and by the rule of interpretation which requires that a beneficial construction should be placed upon the provisions of a statute, when this appears to be consonant with its object."

Keeping in view the aforesaid, necessarily it must be taken that it was a case decided for the purposes of Section 115 of the Code.

8. As regards the maintainability of the revision petition, reference can well be made to the decision of this Court in the case of Joginder Pal v. Raj Rani, (1995) 110 PLR 142. This Court taking note of the change and amendment u/s 115 of the Code held as under :-

"Moreover, it is necessary to bear in mind that the object behind enactment of Section 115 C.P.C. is to provide means to an aggrieved party to secure correction or rectification of non-appealable order. The very purpose and object of Section 115 would be defeated if the Court was to take the view that the interlocutory orders passed by the Civil Courts are not revisable u/s 115 C.P.C. and that such orders can be challenged only when the judgment of the main case is appealed against. Explanation to Section 115 unambiguously lays down that in Section 115 expression "any case which has been decided", includes any order impugned in the course of a

suit or any other proceedings. This Explanation makes it clear that case decided means even a part of the case and as such on the fulfilment of the conditions laid down in proviso (b) interference can be made with the interlocutory orders.

From the above discussion, it follows that if any jurisdictional error has been committed by the subordinate Court in the course of a suit or other proceeding it can be corrected in revision provided that the order had occasioned failure of justice or caused irreparable injury to the party against whom the order has been made. The mere fact that such order can be challenged by way of an appeal against the decree u/s 105 C.P.C. would not be sufficient to hold that revisional jurisdiction of the Court u/s 115 cannot be exercised against such an order. Mere availability of remedy by way of appeal against the decree cannot be treated as a ground for taking the view that no failure of justice will be occasioned or irreparable injury will not be suffered by the party by an interlocutory order."

9. Yet another Single Bench of this Court in the case of [Hazara Singh and Others Vs. Bachan Singh and Others](#), concluded that Order 18 Rule 17-A of the Code does not define the stage when the application is to be filed. The cases which fall under Clause (b) of proviso to Section 115(1) of the Code would not be sustainable if they do not satisfy the conditions pertaining to failure of justice.

10. Similarly, in the case of [Ram Nath Vs. Lal Singh](#), this Court held that a revision against the order dismissing application under Order 18 Rule 17-A of the Code would be maintainable.

11. The position, therefore, can briefly be summed up that in normal circumstances the discretion exercised by the trial Court does not require interference lightly and the proviso added w.e.f. 1.2.1977 in Section 115 of the Code is to be adhered to. The High Court would restrict itself in not interfering in the interim orders referred to therein. But if it would occasion a failure of justice or cause irreparable injury to the party against whom it was made, Section 115 of the Code must come to the rescue of the aggrieved party and the High Court cannot fail in its duty in not interfering in those cases. The mere fact that such an order can be challenged by way of appeal in the judgment and the decree that may be passed would not suffice to hold that jurisdiction u/s 115 of the Code cannot be exercised. Consequently, it must be termed that normally where such is the case where it would occasion a failure of justice or cause irreparable injury, a revision petition would be maintainable. There cannot be a strait-jacket formula that no revision petition would be maintainable against such an order that would have been passed.

12. What is the position herein? Order 18 Rule 17-A of the Code reads as under -

17-A. Production of evidence not previously known or which could not be produced despite due diligence.- Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit

that party to produce that evidence at a later stage on such terms as may appear to it to be just."

13. The plain language of Order 18 Rule 17-A of the Code clearly shows that if a particular party with due diligence cannot produce evidence which was not within its knowledge, or could not be produced by him at the time when that party was leading his evidence, then additional evidence could be produced by the said party. The report that the petitioner wants to produce is of dated 18.8.1998. At this stage, therefore, with due diligence he could not produce the important document. Disallowing the same would occasion a failure of justice or cause irreparable injury. Therefore, not only the order cannot be sustained, it must follow in the peculiar facts that revision petition would be maintainable.

14. For these reasons, the impugned order is set aside and revision petition is allowed. The petitioner be allowed to produce the additional evidence.