

(2002) 08 P&H CK 0043

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2829 of 2002

Bikramjeet Singh

APPELLANT

Vs

Ramesh Kumar and Others

RESPONDENT

Date of Decision: Aug. 5, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 3, 115

Citation: (2003) 1 BC 345 : (2003) 1 RCR(Civil) 350

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: G.S. Punia, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This order will dispose of Civil Revision Petition Nos. 2813 and 2829 of 2002 as common question of law is involved in both these petitions. However, for the purposes of this order, facts are being taken from C.R. No. 2829 of 2002.

2. This revision petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity the Code) is directed against the order dated 1.3.2002 passed by the Additional Civil Judge (Senior Division), Khanna directing the defendant-petitioner to furnish bank guarantee and one surety to the tune of Rs.2,00,000/- each and payment of Rs.2,000/- as costs on or before the next date of hearing in a suit which was filed under Order 37 Rule 3 of the Code.

3. Brief facts of the case which have led to the filing of the present petition are that the plaintiff-respondent filed Civil Suit No. 218 dated 13.8.2001 under Order 37 of the Code for recovery of Rs.3,63,000/- with interest @ 2% per month w.e.f. 11.9.2000 to 26.1.2001. At the stage of putting in appearance under Rule 3.of Order 37 of the Code, the impugned order was passed on 1.3.2002 which reads as under:

"In view of separately recorded statement of Ld. counsel for plaintiff, application of defendant U/o 37 rule 3 CPC is allowed subject to furnishing his bank guarantee and one surety to the tune of Rs.2,00,000/- (two lacs) each and payment of Rs.2000/- as costs on or before next date of hearing. Now written statement be filed on 3.4.2002."

4. I have heard Shri G.S. Punia, learned counsel for the defendant-petitioner who has argued that the revision petition would be competent under the amended provisions of Section 115 of the Code because it would amount to disposing of other proceedings within the meaning of expression used in the newly added proviso and, therefore, the revision petition would be competent.

5. I have given a serious consideration to the submission made by the learned counsel and am of the view that the scope of revisional jurisdiction u/s 115 of the Code has been further restricted by the Act No.46 of 1999 and Act No.22 of 2002 incorporating the amendments in the Code. The amendment made by Act No.46 of 1999 which has been brought into effect on 1.7.2002 would be applicable by virtue of provisions of Section 32 of 1999 Act which deal with repeal and savings. Section 32 of 1999 Act insofar as it is relevant reads as under:

"32. Repeal and savings.-(1) xx xx xx xx

(2) Notwithstanding that the provisions of this act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses act, 1897 (10 of 1897)-(a) to (h)

XX XX XX XX

(i) the provisions of section 115 of the principal Act, as amended by Section 12 of this Act, shall not apply to or affect any proceeding for revision which had been finally disposed of.

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6. A perusal of the above provisions makes it evident that the revision petitions which have been finally disposed of would not be governed by the amendment made in Section 115 and it would not apply to those revision petitioner. However, the revision petitions which are taken up for hearing even if instituted prior to 1.7.2002 challenging the orders passed earlier to that date would be governed by the amended section 115 of the Code. Therefore, section 115 of the Code would be attracted to the present case. Section 115 of the Code amended reads as under:

"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 the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings w.e.f. 1.7.2002.]

[(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.]

[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court w.e.f. 1.7.2002.]"

7. The newly added proviso makes it abundantly clear that the High Court is not to exercise jurisdiction to vary and reverse any order made during the course of a suit or other proceedings unless the order is of such a nature that had it been made in favour of the revision petitioner it would have finally disposed of the suit or other proceedings. In other words, the jurisdiction of the High Court would depend on the question as to whether the order challenged by the revision petitioner is reversed, it would finally disposed of the suit. If answer to this question is yes then the High Court would be well within its jurisdiction to interfere and reverse the order passed during the course of proceedings of the civil suit. If the reversal of the order by the High Court does not result into disposal of the suit then the High Court would not have jurisdiction to entertain the revision petition. In *Prem Bakshi and Ors. v. Dharam Dev and Ors.* (2002)130 P.L.R. 558 (S.C.) it has been held that in cases where the amendments under order VI rule 17 of the Code has been allowed no revision would be competent u/s 115(1) proviso (a) of the Code as it stood before amendment of the Code. It also contemplated some of the cases where such a revision petition would be competent, namely, if the trial Court held by an interlocutory order that it has no jurisdiction to proceed with the case or that the suit is barred by limitation it would finally be deciding the case and such order would be revisable. The observations of their Lordships read as under:

"4. In Major S.S. Khanna Vs. Brig. F.J. Dillon, this Court considered the expression "any case which has been decided" in sub section (1) of Section 115 CPC and held that the expression case is a word of comprehensive import and includes civil proceedings other than suits and is not restricted by anything contained in the said section to the entirety of the proceeding in a Civil Court and to interpret the expression case as an entire proceeding only and a part of the proceedings would impose an unwarranted restriction on the exercise of powers of superintendence by

the High Court. This view of the High Court has now been legislatively adopted by the Parliament by introducing the explanation to Sub-section (1) of Section 115 CPC and, therefore, an interlocutory order would be revisable. There is no doubt that present order being an interlocutory order is revisable u/s 115, but for exercising powers under this Section by the High Court, the order must satisfy one of the conditions mentioned in clause (a) and (b) of the proviso.

5. The proviso to Sub-section (1) of Section 115 puts a restriction on the powers of the High Court inasmuch as the High Court shall not under this section vary or reverse any order made or any order deciding a issue, in course of a suit or other proceedings except where (i) the order made would have finally disposed of the suit or other proceedings or, (ii) the said order would occasion a failure of justice or cause irreparable injury to the party against whom it is made. Under clause (a), the High Court would be justified in interfering with an order of a subordinate Court if the said order finally disposes of the suit or other proceeding. By way of illustration we may say that if a Trial Court holds by an interlocutory order that it has no jurisdiction to proceed the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable. The order in question by which the amendment was allowed could not be said to have finally disposed of the case and therefore, it would not come under clause (a)."

8. The effect of the amendment would be to restrict the challenge of the revision petitioner to the judgment and decree which may ultimately be passed. If an appeal is filed u/s 96 of the Code such an order could be made subject matter of challenge either by the revision petitioner by filing the appeal or by raising the cross objection. Such a course would be permissible in view of the provision of order XLIII rule 1-A of the Code.

9. In view of the above, the revision petition is dismissed as not maintainable. However, the dismissal of the revision petition would not constitute any bar for the defendant-petitioner to urge any submission against the impugned order under Order 43 Rule 1 A of the Code i.e. at the stage of appeal if any such necessity arises.