

(2017) 06 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: 1000 of 2017 (O&M)

Dr. SK Singh

APPELLANT

Vs

State of Haryana & Ors.

RESPONDENT

Date of Decision: June 2, 2017

Hon'ble Judges: Surya Kant, Hari Pal Verma

Bench: DIVISION BENCH

Advocate: Raj Kumar Gupta

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Aggrieved against the order rejecting an application u/s 7-C of the U. P. Act No. 3 of 1947, the applicant filed a revision. The same was dismissed on the ground that it was not maintainable. The learned District Judge relied on the decision in [Har Prasad Singh and Others Vs. Ram Swarup and Others](#), . The Full Bench construed Section 115 of the CPC as amended by Section 6 of U. P. Act No. 37 of 1972 which provided:

"The High Court in cases arising out of original suits of the value of twenty thousand rupees and above, and the District Court in any other case may call for the record of any case which has been decided by any court subordinate to such High Court or District Court, as the case may be 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 or the District Court may make such order in the case as it thinks fit."

2. One of the questions raised before the Full Bench was as to the significance of the phrase "any other case" occurring in the clause "District Court in any other case may call for the record of any case."

It was held by the Full Bench that:--

"The third question poses a queer conundrum. As already shown above, no revision would lie in the High Court in cases arising out of any proceeding other than an original suit of which the valuation is rupees twenty thousand or more the jurisdiction and powers of the District Courts, however, apparently, seem to be completely unlimited and unfettered in cases where the order sought to be revised does not arise out of an original suit, but arises out of any other proceeding, irrespective of the valuation, subject-matter or nature of such proceeding. No doubt such would be the position if the words "in any other case" are construed comprehensively as already indicated above. But then a somewhat strange result will follow--while the High Court, the Highest Court in the State would possess a very very limited and restricted revisional power u/s 115 of the Code, the District Court which is subordinate to the High Court, will exercise revisional jurisdiction and powers under the same section over the whole revision found absolutely, excepting, if I may use that expression, the revisional enclave of the High Court. I am not prepared to think or accept that such was the intention of the Legislature. If, however, such a result must necessarily follow upon a proper and legitimate construction of the amended section, the Court can do nothing about it. It may be a case of lacuna of casus omissus in the legislation; but if that be so, it is for the Legislature to consider and do the needful.

But the point for consideration still remains whether the words "in any other case" must need be given such wide meaning. In my opinion, such wide interpretation need not necessarily be given. The words "in any other case", in the context, only refer to and have been used in contradistinction to the preceding words "in cases arising out of original suits". Therefore, it can be reasonably held, without doing any violence to the language of the amended Section 115 of the Code that the words "in any other case" refer to and mean a "case arising out of an original suit of which the valuation is below twenty thousand rupees". Such an interpretation would also lead to queer and, may be, undesirable results, because under various laws and statutes judicial proceedings other than suits lie in and have to be dealt with by the civil courts, but in respect of and over such proceedings there will be no supervisory control by way of revision under the section. But to my mind, that would be, again if I may use the expression, "the lesser evil" and I would prefer it to the other."

3. Subsequently, the Legislature by Section 2 of the U. P. Civil Laws (Amendment) Act 19 of 1973 provided:--

"Substitution of new section for Section 115 For Section 115 of the Code of Civil Procedure, 1908 (5 of 1908), as amended in its application to Uttar Pradesh

(hereinafter in this Chapter referred to as the said Code.), the following section shall be substituted namely:

"115. Revision.-- The High Court in cases arising out of original suits of the value of rupees twenty thousand and above including such instituted before the 20th day of September, 1972, and the District Court in any other case, including a case arising out of an original suit instituted before the 20th day of September, 1972, may call for the record of any case which has been decided by any court subordinate to such High Court or District Court, as the case may be, 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 or the District Court, as the case may be, may make such order in the case as it thinks fit:

Provided that in respect of cases decided before the 20th day of September, 1972, and also all cases arising out of original suits of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section."

4. In view of Section 1 (3) of the Amending Act, this section came into force on 20th September 1972. Thus, the amendment took effect on that date. That was the date when U. P. Act No, 37 of 1972 came into force. The result, therefore, is that the amendment introduced by 1973 Act is retrospective so as to completely nullify the amendment introduced in Section 115 of the CPC by U. P. Act No. 37 of 1972. In the amendment Section the relevant clause is "and the District Court in any case, including a case arising out of an original suit instituted before the 20th day of September, 1972." Thus, it is clear that the revisional jurisdiction of the District Court extends not only to cases arising out of an original suit instituted before the 20th day of September, 1972, but also to such original suits instituted after that date, but which are of the value less than Rs. 20,000/- . The District Court's revisional jurisdiction would also cover cases arising out of proceedings other than original suits. In substance the phrase "in any other case" has now been enlarged to including proceedings which may be initiated not in the form of a plaint under the Code of Civil Procedure. In the present case the learned Munsif Etawah decided a miscellaneous case u/s 7-C of the U. P. (Temporary) Control of Rent and Eviction Act, 1947. It is clearly a case falling within the purview of "in any other case" occurring in the amended Section 115.

5. The revision filed by the applicant was maintainable. The learned District Judge was in error in dismissing the same as non-maintainable.

6. In the result, the revision succeeds and is allowed. The impugned order is set aside and the matter is sent back to the District judge for disposal of the revision in accordance with law. The parties may, however, bear their own costs.