

(1979) 11 AHC CK 0045

Allahabad High Court

Case No: Civil Revision No. 1309 of 1978

Janta Kalyan Committee

APPELLANT

Vs

Nagar Mahapalika, Kanpur and
others

RESPONDENT

Date of Decision: Nov. 15, 1979

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Hon'ble Judges: B.D.Agarwal, J

Final Decision: Dismissed

Judgement

B. D. Agarwala, J.

This is a plaintiff's revision under Section 115 of the Civil Procedure Code directed against the order of the trial Court, namely, 9th Additional Munsif, Kanpur, dated 4th February 1978, by which the trial Court accepted the written statement filed on behalf of the Nagar Mahapalika, Kanpur, respondent No. 1, on payment of Rs. 20/as costs.

Learned counsel for the respondent has raised a preliminary objection that such an order is not revisable under Section 115 of the Civil Procedure Code.

Section 115 of the Civil Procedure Code was amended by the State of Uttar Pradesh but since there was a Central amendment in Section 115 of the Code of Civil Procedure by virtue of the Civil Procedure Code amendment Act of 1976 a Full Bench of our Court in Jupiter Chit Fund Private Ltd. v. Dwarka Deesh Dayal 1979 (5) A.L.R. 341 took the view that those revisions which were filed before August 1st 1978 would be decided in accordance with the Central Act and as such for the purpose of this case I am considering the effect of Section 115 of the Civil Procedure Code as amended by the Civil Procedure Code Amendment Act of 1976.

Under Section 115 of the Civil Procedure Code the High Court has been empowered to interfere in revision in "a case which has been decided. An Explanation has been added to Section 115 of the Civil Procedure Code to the following effect:

"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.

The argument of the learned counsel for the applicant is that since the phrase "case decided includes every order passed during the course of the suit, therefore, the impugned order is a case decided and is revisable. Learned counsel has in support of his argument relied on Food Corpn. of India y. B.N. Dhar A.I.R. 1978 Cal. 265. The Calcutta High Court has held that an order would be revisable subject to the limitation that it would come under subclause (a) or subclause (b) of the proviso to subsection (1) of Section 115 of the Civil Procedure Code. Therefore, even according to the Calcutta High Court a revision would lie if the order is of a kind where it would dispose of the suit or other proceedings or the order would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Admittedly the order in question does not finally dispose of the suit. The question therefore, remains to be considered is as to whether the order in question would occasion failure of justice or cause irreparable injury to the party against whom it was made. In the instant case the trial Court has only accepted the written statement on payment of Rs. 20/ as costs. This does not in any manner occasion a failure of justice. In fact it would advance justice and would give an opportunity to the respondent Nagar Mahapalika to put its case before the Court. It would further not cause any irreparable injury to the applicant as the mere acceptance of the written statement does not in manner destroy the cause of the applicant. After the acceptance of the written statement opportunity would be given to the parties for production of evidence on the issues framed and thereafter the case would be decided on merits. So no irreparable injury is likely to be caused to the applicant. In view of the above the order in question is not revisable under Section 115 of the Civil Procedure Code and as such the preliminary objection raised by the learned counsel is sustained.

Learned counsel for the applicant has urged that since the evidence had already commenced the trial Court had no jurisdiction to accept the written statement. In support of his submission learned counsel has relied upon the case of Sia Sinha v. Shtvadhari Sinha A.I.R. 1972 Patna 81. Learned counsel further urged that the filing of the written statement by the respondent amounts to an abuse of the process of the Court. It is not necessary for me to consider these questions as I have taken the view that the order is not revisable under Section 115 of the Civil Procedure Code as it does not occasion failure of justice nor any irreparable injury is likely to be caused to the applicant.

In the result I dismiss the revision. In the circumstances of the case parties are directed to bear their own costs.