

(2017) 05 AHC CK 0120
ALLAHABAD HIGH COURT
Case No: 52 of 2017

UDAI SHANKER DUBE

APPELLANT

Vs

STATE OF U P & ANR

RESPONDENT

Date of Decision: May 24, 2017**Acts Referred:**

- Code of Civil Procedure, 1908, Section 115, Order 6 Rule 17 - Revision

Hon'ble Judges: Attau Rahman Masoodi**Bench:** Single Bench**Advocate:** Subhash Vidyarthi, Mukund TewariFinal Decision: Dismissed

Judgement

1. Heard Sri Subhash Vidyarthi, learned counsel for the revisionist and Sri Mukund Tiwari, learned counsel who has put in appearance on behalf of Lucknow Development Authority as well as the State.

2. This Civil Revision filed under Section 115 of Code of Civil Procedure (CPC) has indisputably arisen from an order passed by the court below on an application filed under Order VI Rule 17 CPC at the appellate stage. The trial court dismissed the suit on 22.9.2009 where against civil appeal no. 219 of 2009 was filed by the appellant. Thereafter against rejection of the application filed under Order VI Rule 17 in the appeal by the impugned order, this civil revision has been filed.

3. Learned counsel for the opposite parties at the very outset have raised an objection against the maintainability of present revision under Section 115 of CPC on the ground that entertaining such a revision before this Court would be hit by the principle of law enunciated by this Court in Full Bench decision rendered in the case reported in AIR 1979 All 218 [Jupiter Chit Fund (Pvt.) Ltd. v. Dwarka Diesh Dayal

and Ors.] as upheld by the apex court in the case of Vishnu Awatar v. Shiv Autar and Ors. reported in AIR 1989 SC 1575 .

4. Learned counsel for the opposite parties have also placed reliance upon a judgement reported in AIR 1994 Allahabad 198 (Sri Kunj Behari and another v. Sri Krishna Dutt and another) , wherein the principle of law enunciated by the apex court as well as Full Bench of this Court has been applied leaving no scope for doubt that a revision before this Court in the matters of orders/judgements arising from revisional/appellate proceedings, would not lie.

5. To the contrary, Sri Subhash Vidyarthi, learned counsel for the revisionist, placing reliance upon a judgement of this Court reported in 2010 ILR 2 Allahabad 539, has argued that in the subsequent judgement rendered by this Court, the principle of law laid down in the Full Bench decision of this Court as upheld by the apex court, a distinction has been drawn in the matter of orders having no effect of disposing of the appeal finally but at the same time, the order essentially falls in the category of case decided.

6. Having regard to the rival submissions advanced, in the light of judgements referred to above, this Court would find that the principle of law has been well discussed by the Full Bench judgement and the apex court judgement leaves no manner of doubt that any order passed in the revisional/appellate proceedings would not be amenable to the jurisdiction under Section 115 of CPC. This principle is gathered from the observations made by the apex court, which are extracted below:

"The residuary power is with the District Court. The High Court has no revisional power under Section 115 unless the case arises out of an original suit or other proceeding i.e. other original proceeding decided by the District Court or where the case arises from a suit of and above Rs. 20,000/- in value. If the District Court has decided, not in its original jurisdiction, then the case, be it a revisional or appellate order, is not amenable to the High Court's revisional jurisdiction. Of course, if the case arises out of suits or other proceeding of the value of Rs. 20,000/- and above, the High Court has revisory power. All other cases fall outside and become final at the District Court level

.....
..... Precedentially, the result is no different as the Full Bench of the High Court has been at pains to make out. Purposively speaking, it will be stultifying to interpret Section 3 to mean that orders in appeal by District Courts must suffer a distant journey to revisory justice from the High Court. Thus we reach the convergent conclusion of "no revision to the High Court", viewing the text of Section 3, lexically, literally, schematically, and in the setting of social justice of which saving the average litigant from the

intoxication of tantalising litigation is a component."

7. Having regard to the principle of law laid down by the apex court, it does not seem open for this Court to read the binding precedent in a manner to dilute the essence of principle, particularly when a litigant against the nature of order impugned herein is not remediless. The principle of law has also to be upheld to serve the object of curbing the delay in civil litigation.

8. The apex court judgement on the principle of law laid down is clear, unambiguous and doubtless, therefore, the exception carved out by learned Single Judge, in my humble opinion, was firstly impermissible and secondly it amounts to reading down the principle in a manner that does not stand in consonance with the true import of Section 115 of CPC.

9. From a bare perusal of the relevant statutory provision applicable as on date, it is gathered that the revisional jurisdiction of this Court is essentially available against the final judgement arising from original proceedings or the proceedings original in nature and would not lie against the orders passed in an appeal or revision. Needless to say that this Court is bound by the principle of stare decisis and the Full Bench decision as upheld by the apex court could not be read contrary to the principle of law as was laid down by the apex court. The position is further fortified under a recent judgement rendered by this Court in the case of Jagdish Narain and others v. Onkar Nath Tandon and others (Civil Revision No. 95 of 2017) decided on 20.4.2017.

10. The preliminary objection thus, raised by learned counsel for opposite parties deserves to be sustained and the revision not being maintainable in the eye of law, deserves to be dismissed and is hereby dismissed, leaving it open to the revisionist to avail the remedy open to him under law. Certified copy of the impugned order may be returned to the learned counsel for the revisionist by retaining a photocopy of the same on record.

11. No order as to cost.