
**S.V.P.S. Pandiarajan Vs M.A.M.S.N. Navamani and Others
M.A.M.S.N.
Navamani and Others Vs S.V.P.S. Pandiarajan**

**C.R.P. (PD) (MD) No. 1416 of 2009 and C.R.P. (PD) (MD) No. 237 of 2010 and M.P.
(MD) No"s. 1 and 2 of 2012**

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 8, 2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 9 Rule 13, 115, 115(1)#Constitution of India, 1950
" Article 226, 227#Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 " Section 23,
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Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: K. Sekar in C.R.P. PD MD No. 1416 of 2009 and Mr. S. Subbiah in C.R.P. PD MD
No. 237 of 2010, for the Appellant; S. Subbiah in C.R.P. (PD) (MD) No. 1416 of 2009 and Mr. K.
Sekar in C.R.P. (PD) (MD) No. 237 of 2010, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice G. Rajasuria

1. C.R.P.(MD) No. 1416 of 2009 is focussed as against the Fair and Executable order dated 17.08.2009 in Review Petition No. 8
of 2009, in

I.A.No. 28 of 2008 in R.C.O.P.No. 2 of 2007 on the file of the District Munsif, Virudhunagar and set aside the same. C.R.P.(MD)
No. 237 of

2010 has been filed to get set aside the order dated 17.08.009 passed in I.A.No. 8 of 2009 in I.A.No. 28 of 2008 in R.C.O.P.No. 2
of 2007 on

the file of the District Munsif of Virudhunagar.

2. Heard both sides.

3. A thumb-nail sketch of the germane facts, which are absolutely necessary for the disposal of this Civil Revision Petition would
run thus:

The Advocates on both sides in unison would submit that the respective Civil Revision Petitions are focussed as against the order passed by the

learned Rent Controller. Whereupon, this Court raised a query as to how by virtue of Section 23 of Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960, straight away the Civil Revision Petitions would lie under Article 227 of the Constitution of India; for which I could not get any

convincing reply from the Advocates on both sides.

4. My mind is reminiscent and redolent of the decision of this Court in *Durairaj and others v. Venugopal and another* reported in 2012-3-L.W.

807. Certain excerpts from it, would run thus:

12. I would like to refer to sub section (2) of Section 115 of CPC, which would unambiguously and unequivocally highlight and spotlight the fact

that if appeal lies in respect of a matter, then no revision could be entertained u/s 115 of CPC.

13. The warp and woof of the contention of the learned counsel for the respondent/plaintiff is to the effect that as against the order passed in the

CMA, inasmuch as no further appeal is contemplated, the only remedy could be the one u/s 115 of CPC. I cannot countenance such a view for

the reason, that had the legislators thought that that should be the legal position as canvassed by the learned counsel for the respondent/plaintiff, the

legislators would have spelt out thus: "the revision under this Section [S. 115 of CPC] shall not lie without exhausting the appeal remedy, if any,

but that is not the legislative language and that was not the intention of the legislators as well. In *Surya Devi's* case (*supra*), the Hon"ble Apex

Court glaringly and pellucidly shed light on the point that no revision u/s 115 of CPC would lie as against the order in Appeal. The legislators in

their wisdom thought that in respect of certain matters appeal remedy if provided under law, then the parties concerned should get themselves

satisfied with that remedy and once again, they cannot carve out their own dubious way of approaching the High Court u/s 115 of CPC. The

mischief sought to be suppressed by the amendment of Section 115 of the CPC is axiomatic and obvious and if the view of the counsel for the

respondent/plaintiff is accepted, it would amount to opening the flood gate throwing to winds the spirit and essence of Section 115 of the Code of

Civil Procedure.

14. The learned counsel for the respondent/plaintiff also inviting the attention of this Court to the proviso appended to sub Section (1) of Section

115 of CPC, would try to buttress and fortify his view, but an analysis of the said proviso would reveal and demonstrate that it is against his case.

To maintain a revision under the said proviso, hypothetically the impugned interim order should be visualized thus: Gramatically "unreal past

situation in the said proviso is contemplated. If such order had been passed in his favour, whether it would have the effect of finally disposing of the

suit or the proceedings before the lower court. Here, it is crystal clear that if the said order had been passed under Order IX Rule 13 of the CPC

by allowing the interlocutory application, the main suit itself would have got revived and the proceedings in the main suit would be in progress. The

same position would be if the CMA had been allowed. Hence the said proviso cannot be pressed into service by the respondent/plaintiff in support

of his proposition that only a revision u/s 115 of the CPC would lie.

15. Needless to point out, that before 1976 amendment of CPC the position was different and the objects and reasons relating to amendment of

Section 115 of the CPC is worthy of being reproduced here under:

[Report of the Joint Committee-Gazette of India, Ext., dt. 1-4-1976, Pt.II, S.2, p.804/10-11]

Amendments: Objects and Reasons.- Clause 43 (Original clause 45).- By clause 45 of the Bill, section 115 of the Code was proposed to be

omitted. The question whether it is at all necessary to retain section 115 was carefully considered by the Committee. The Law Commission has

expressed the view that, in view of article 227 of the Constitution, section 115 of the Code is no longer necessary. The Committee, however, feel

that the remedy provided by article 227 of the Constitution is likely to cause more delay and involve more expenditure. The remedy provided in

section 115 is on the other hand, cheap and easy. The Committee, therefore, feel that section 115, which serves a useful purpose, need not be

altogether omitted particularly on the ground that an alternative remedy is available under article 227 of the Constitution.

The Committee feel that the expression ""case decided"" should be defined so that the doubt as to whether section 115 applies to an interlocutory

order may be set at rest. Accordingly, the Committee have added a proviso and an Explanation to section 115.

[Statement of Objects and Reasons (Bill 1999).]

Amendments: Objects and Reasons.-Clause 12.- Section 115 of the Code provides for revision by the High Court or an order or decision of any

Court subordinate to such High Court. The Malimath Committee noticed that often the records of the lower Courts are sent to the High Court in

the revisional proceedings. It is imperative that records of proceedings pending in the subordinate Court should not be sent unless High Court so

desires and revision should not operate as stay of proceedings before the trial Court. The Committee while agreeing in principle that scope of

interference against interlocutory orders should be restricted, felt that the object can be achieved more effectively without demanding the High

Court of the power of revision. Clause 12 seeks to achieve the above object by suitable amendments to section 115.

16. Wherefore, if the view of the learned counsel for the respondent/plaintiff is accepted, it would amount to rendering the very restrictive scope

found embedded in Section 115 of CPC nugatory and otiose. As such, I am of the considered view that once appeal remedy is contemplated in

respect of an order and the appeal remedy itself has been exhausted, then the question of invoking Section 115 of CPC would be a well-neigh

impossibility.

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20. It is quite obvious and axiomatic that when appeal remedy is contemplated, revision u/s 115 of CPC would not lie. Then the core question

arises as to what would happen to a litigant who is really having some grievance if there is any gross perversity in the impugned order. At this

juncture, I recollect certain excerpts from the decision of the Hon"ble Apex Court reported in Salem Advocate Bar Association, Tamil Nadu Vs.

Union of India (UOI), certain excerpts from it would run thus:

40. Section 115 of the Code vests power of revision in the High Court over courts subordinate to it. Proviso to Section 115(1) of the Code before

the amendment by Act 46 of 1999 read as under:

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.

(emphasis supplied)

Now, the aforesaid proviso has been substituted by the following proviso:

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.

The aforesaid clause (b) stands omitted. The question is about the constitutional powers of the High Courts under Article 227 on account of

omission made in Section 115 of the Code. The question stands settled by a decision of this Court in Surya Dev Rai v. Ram Chander Rai holding

that the power of the High Court under Articles 226 and 227 of the Constitution is always in addition to the revisional jurisdiction conferred on it.

Curtailment of revisional jurisdiction of the High Court u/s 115 of the Code does not take away and could not have taken away the constitutional

jurisdiction of the High Court. The power exists, untrammelled by the amendment in Section 115 and is available to be exercised subject to rules of

self-discipline and practice which are as well settled.

As such in certain circumstances, if at all the party concerned could make out a case under Article 227 of the Constitution of India, then he could

petition the High Court invoking the said provision of law.

5. Accordingly, when there is an effective remedy of appeal contemplated under special enactment, the question of invoking Article 227 of the

Constitution of India would not arise. As such these Civil Revision Petitions filed under Article 227 of the Constitution of India are untenable.

Furthermore, Civil Revision Petitions cannot be treated as one filed u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, because u/s

23 of the said Act, an effective appeal remedy is contemplated. Hence, based on the aforesaid finding, I am inclined to dismiss both the Civil

Revision Petitions.

6. On hearing the pronouncement of the order, both the learned Counsel prayed for liberty to approach the Appellate Authority under the Tamil

Nadu Buildings (Lease and Rent Control) Act, 1960. It goes without saying that as per their legal right, they are at liberty to approach the Rent

Control Appellate Authority by adhering to the procedures in law. In the result, both the Civil Revision Petitions are dismissed. Consequently, the

connected Miscellaneous Petitions are dismissed. No costs.