(2011) 11 AP CK 0050

Andhra Pradesh High Court

Case No: C.R.P. No. 2723 of 2011

Mohammed Abdul Sattar		APPELLANT
	Vs	
Mrs. Shahzad Tahera and another		RESPONDENT

Date of Decision: Nov. 25, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 22, Order 21 Rule 22(1), Order 43 Rule 1, Order 5 Rule 20, Order 9 Rule 13
- Constitution of India, 1950 - Article 227, 246, 248, 251, 252
- Limitation Act, 1963 - Section 5

Citation: (2012) 2 ALT 230

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: K.V. Satyanarayana, for the Appellant; M.V. Suresh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar

1. Several questions of law arise for consideration in this revision laid u/s 115 of the CPC (CPC, for short). What is the date of the decree for the purpose of the Order 21 Rule 22 CPC, when the appellate Court dismissed the appeal by default, thereby confirming the decree of the trial Court? Whether a revision u/s.115 CPC lies from an order passed in an execution application u/s.144 CPC? How should affixture of service of notice be effected and what is the effect of such an affixture? What is the subtle distinction between Section 115, CPC and Article 227, Indian Constitution? These are some of the questions, which arise for consideration in this revision.

2. The revision, however, runs in a narrow compass in respect of the facts. The petitioner is the defendant and the judgment debtor. The respondents are the decree holders/plaintiffs. The decree holders are wife and husband. The petitioner was a tenant of the E.P. schedule premises. The respondents, who are the decree holders, filed a suit for eviction, recovery of rent and mesne profits. O.S.No.5109 of 2004 on the file of the XIX Junior Civil Judge, City Civil Court, Hyderabad was decreed on 31.12.2007. The judgment debtor/petitioner was granted three months time to vacate the premises.

3. The judgment debtor preferred A.S.No.80 of 2008 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad. Unfortunately, A.S. No. 80 of 2008 was dismissed for default on 22.03.2010. The decree holders consequently filed E.P.No.64 of 2010 on 15.04.2010. The Execution Court deemed it appropriate to order notice under Order 21 Rule 22 CPC. The judgment debtor, however, did not receive the notice. The notice was merely affixed to the premises said to be the premises of the judgment debtor. Possession was delivered to the decree holders, through the proceedings in the execution petition. The judgment debtor claims that he has come to know of the same and that he consequently filed E.A.No.14 of 2011 under Sections 144 and 151 CPC for restitution. The execution Court dismissed E.A. No. 14 of 2011 in E.P. No. 64 of 2010 in A.S. No. 80 of 2008 in O.S. No. 5109 of 2004. Aggrieved by the orders in E.A. No. 14 of 2011, the revision is laid.

4. Sri M.V.S. Suresh Kumar, learned counsel for the decree holders raised preliminary objections. Inter alia, he contended that only an appeal would apply from an order u/s.144 CPC and not a revision. In the alternative, his contention is that after the amendment of CPC in 2002, a revision u/s.115 CPC would not be maintainable and a revision at best could be under Article 227 of the Indian Constitution only. He also raised a contention that Section 144 CPC could be invoked on the original side and not before the execution Court.

5. Sri K.V. Satyanarayana, learned counsel for the revision petitioner countered every one of these contentions. His claim is that petition u/s.144 CPC is maintainable before the execution Court and that revision is maintainable u/s.115 CPC and in the alternative under Article 227 of the Indian Constitution.

6. Section 115 CPC was drastically amended through the extensive amendments of 2002. In fact, in the extensive and exhaustive amendments to the CPC in 1977, sub-section (2) was incorporated. It is convenient to quote entire 115 CPC for clarity and further analysis. Section 115 reads:

115. 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.

(1) 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 suit or other proceeding is stayed by the High Court.

7. Prior to 1977 amendments to CPC, Section 151 CPC alone was in statute book. The High Court had powers to exercise revisional jurisdiction if any Court subordinate to it exercised jurisdiction, which did not vest in the Court or failed to exercise a jurisdiction, which vested in such a Court. The revisional Court had also power to interfere where the Subordinate Court exercised the powers vested in it illegally or with material irregularity. The CPC prior to 1977 stopped with sub-section (1). In view of innumerable decisions u/s.115 CPC, various controversies and conflicting decisions, sub-section (2) was added in 1977. It was clarified by Section 115(2) CPC that the High Court shall not interfere with an order when an appeal lies from the impugned order either to the High Court or to the Subordinate Court. This is the point on which the learned counsel for the decree holders partly relies upon contending that the revision does not lie from the impugned order on the ground that the same is appealable.

8. As things stood thus, second series of vital and substantive amendments were incorporated to CPC in 2002. Through the 2002 amendments, a proviso was added to Section 115(1) CPC, apart from bringing in Section 115(3). Indeed, the proviso to Section 115(1) existed prior to 2002. However, the proviso prior to 2002 read:

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.

9. Prior to the amendment, the position was that a revision would lie if the order would have finally disposed of the suit or proceedings if the order was made in favour of the revision petitioner. Further, a revision would lie if the impugned order would be tantamount to a failure of justice or irreparable injury to the party against whom such an order was made.

10. By 2002 amendment, the proviso was cut short. More or less, Clause (b) of the proviso, referred to above, was omitted retaining Clause (a) of the proviso, though it was tagged to the main proviso itself. To make legal position clear, Section 115(3) CPC was incorporated making it clear that revision shall not operate as a stay of the suit or other proceedings, unless stay is expressly granted. Indeed, sub-section (3) of Section 115 CPC has no play in the present case, albeit the other part of Section 115 CPC needs to be considered. It is the contention of the learned counsel for the decree holders that first, an appeal ought to lie from the impugned order and that a revision consequently is not maintainable and secondly, where the execution petition has not been terminated, a revision u/s.115 IPC is not maintainable, in view of the prohibition u/s.115IPC proviso. He contended that if a revision is maintainable at all, it would be under Article 227 of the Indian Constitution and not u/s.115 CPC. The relevant portions of Article 227, which are Article 227(1) and Article 227(2), are:

227. Power of superintendence over all courts by the High Court.-(1) Every High court shall have superintendence over al courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3). . .

(4). . .

11. Clause (2) more or less runs analogous to Section 115 CPC. It has wider powers under Clause (1) and Clause (2) of Article 227 of the Indian Constitution vis-a-vis powers vested u/s.115 CPC. Before considering the distinction between Section 115 CPC and Article 227 of the Indian Constitution relevant for the purpose of present case and the distinction thereof, I may refer to one other contention in this context that has been raised by the learned counsel for the decree holders.

12. Sri M.V.S. Suresh Kumar, learned counsel for the decree holders inter alia contended that the order u/s.144 CPC can be invoked in the original side and not on the execution side. He also contended that an order u/s.144 CPC is a decree and

consequently is appealable. He, therefore, contends that a revision would not lie from an appealable order, in view of Section 115(2) CPC.

13. Section 144 CPC deals with the principles of restitution. It reads:

144. Application for restitution.-(1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the Court may make any orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation.-For the purposes of sub-section (1) the expression ''Court which passed the decree or order" shall be deemed to include,-

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, thee Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution of other relief which could be obtained by application under sub-section (1).

14. Section 144 CPC was amended in 1977. It did not undergo any amendments in 2002.

15. In Puni Devi Sahu and Another Vs. Jagannath Mohapatra, , the Orissa High Court explained principles of restitution incorporated u/s.144 CPC. The Court considered that the doctrine of restitution was an equitable doctrine and that it could not be applied if it conflicts with any other rule of equity. The Orissa High Court considered that three conditions should exist for the application of Section 144 CPC viz., i) the restitution sought must be in respect of the decree or order which had been varied or reversed; ii) the party applying for restitution must be entitled to a benefit under a revising decree or order; and iii) the relief claimed must be properly consequential on the reversal or variation of the decree or order. Whether order u/s.144 CPC applies to the present case on merits shall be examined a little later. For the present

part of the consideration, I may point out that the learned counsel for the decree holders contended that Section 144 CPC can be invoked with reference to proceedings in the suit and not with reference to proceedings in execution petition.

16. On the other hand, Sri K.V. Satyanarayana, learned counsel for the revision petitioner/judgment debtor contends that the impugned order is an order indeed and consequently, the provisions u/s.144 CPC would apply to the case.

17. It is the contention of the learned counsel for the petitioner that in view of the language deployed by Section 144 CPC, the principles of restitution would apply not only to decrees passed in the suits but to orders including orders passed in execution proceedings. The very beginning of Section 144 CPC is that the principles of restitution would be applicable in respect of decrees and orders. Obviously, the proceeding in an execution is an order. In E.P.No.64 of 2010, an order was passed directing the delivery of the property. The property was, consequently, delivered to the decree holders.

18. The question is whether this order of delivery of the EP schedule property in E.P.No.64 of 2010 is an order within the meaning of Section 144 CPC for the application of restitution proceedings. The learned counsel for the petitioner placed reliance upon Mrs. Kavita Trehan and another Vs. Balsara Hygience Products Ltd., In that case, the court observed that Section 144 CPC was a part of the general law of restitution and that it was not exhaustive. The court further observed that jurisdiction to order restitution was inherent in every court and should be exercised whenever justice of the case demanded. The Supreme Court further clarified that the principles of restitution would be exercised under the inherent powers of the court when the case did not strictly fall within the ambit of Section 144 CPC. The Supreme Court thus considered that proceedings u/s.144 CPC deserve to be exercised more or less liberally. The contention of the learned counsel for the decree holders that the proceedings u/s.144 CPC ought to be filed on the original side alone and the very petition in E.A.No.14 of 2011 is not maintainable and deserved to be dismissed in limine, therefore, cannot be accepted.

19. Indeed, it was observed in Neelathupara Kummi Seethi Koya Phangal (dead) by L.Rs. Vs. Montharapalla Padippua Attakoya and others, hat restitution could be ordered by the court, which passed the decree or order and that the court to which the decree has been transferred for execution could not order the restitution. In the present case, the order was passed by the execution court itself. Restitution is claimed by the judgment debtor questioning the order of the execution court. Therefore, the restitution petition is maintainable before the execution court. In V.T. Hundlani Vs. Robert C. Kenny, an ex parte decree for eviction was set aside by an appellate court. The Bombay High Court observed that the trial Court would grant restitution to the tenant on the petition of the tenant. This decision perhaps means that it is the court, which passed the decree, which should grant restitution. However, where the possession was delivered through the execution proceedings, I

consider that it is the execution court which shall have to order for the restitution.

20. This Court has clarified the conditions of restitution in Ganesh Parshad Vs. Adi Hindu Social Service League, the restitution sought for must be in respect of a decree or order which had been varied or reversed, ii) the party applied for restitution must be entitled to the benefit under a reversing decree or order, and iii) the relief claimed must be properly consequential on the reversal or variation of the decree or order. The Supreme Court clarified in Mahjibhai Mohanbhai Barot Vs. Patel Manibhai Gokalbhai and Others, that the application for restitution u/s.144 CPC is an application for the execution of a decree. That being so, obviously the execution court has jurisdiction to order for the restitution. It may be recalled that one of the grounds of attack of this revision by the decree holders is that a petition u/s.144 CPC was not maintainable before the XIX Junior Civil Judge, City Civil Court, Hyderabad as an execution court and that the petition for restitution is not maintainable on the orders in execution proceedings. For the reasons stated above, both these contentions are liable to be negatived. I regret to differ from the contention of the learned counsel for the decree holders in this regard. I am constrained to conclude that a restitution petition u/s.144 CPC is maintainable from an order passed by the execution court resulting in delivery of controversial property from the possession of the judgment debtor to the decree holders and also hold that such a restitution petition is maintainable before the execution court.

21. Now, I may return to another fundamental question raised by the learned counsel for the decree holders. It may be recalled that the decree holders contend that a revision u/s.115 IPC is not maintainable and perhaps a revision under Article 227 of the Indian Constitution is also not maintainable. His claim is that an appeal would lie from the order in E.A.No.14 of 2011 passed u/s.144 CPC. The learned counsel for the revision petitioner/judgment debtor contended that this petition was laid not u/s.144 CPC simpliciter and that E.A.No.14 of 2011 was a petition u/s.144 CPC read with Section 151 CPC and that assuming that if an order u/s.144 CPC is appealable, an order u/s.151 CPC is not appealable and consequently, a revision would lie.

22. In State Govt. of Andhra Pradesh Vs. Manickchand Jeevraj and Co., Bombay, , pending the suit for declaration of title and for possession of movable properties attached by the revenue authorities, the court raised the attachment. When the suit was decreed ultimately, the Division Bench of this court observed that the court could order for restitution of the amount in favour of the plaintiff together with interest. More important, the Division Bench held that even if Section 144 CPC did not apply, the restitution could be ordered u/s.151 CPC. The Division Bench placed reliance upon an old case of the Privy Council in AIR 1922 269 (Privy Council) , where the Court held that the proposition that restitution could be ordered either u/s.144 CPC or Section 151 CPC was well-settled. The Court merely cautioned that u/s.144 CPC the court has no alternative but to order for restitution; and that if the case fell

u/s.151 CPC, a discretion is vested in the court to order restitution or otherwise. It is the contention of the learned counsel for the judgment debtor that in view of Manik Chand, assuming that restitution u/s.144 CPC is not maintainable before the execution court, the same was maintainable u/s.151 CPC and that as no appeal would lie from an order u/s.151 CPC this revision is maintainable.

23. It is pertinent to notice that it has become the practice to quote Section 151 CPC for every application whether it is an application for setting aside the ex parte order, to bring legal representatives on record, to condone the delay u/s.5 of the Limitation Act or for any other purpose. It is rightly contended by the learned counsel for the decree holders that if any order on a petition becomes revisible on the ground that the petition was u/s.151 CPC, every order and perhaps every decree also becomes revisible. He pointed out that a revision would lie only when there is no provision for appeal. In view of the language u/s.115 CPC, it is evident that where an appeal would lie, a revision cannot be maintained.

24. Regarding the application of Section 151 CPC, it perhaps should be considered whether the application falls under any provision of the Code or other enactment and whether Section 151 CPC was quoted by way of abundant caution as a safeguarding step. The pith and substance of a petition would decide whether it is a petition u/s.151 CPC or any other provision or any other provision r/w Sec.151 CPC. If such a petition is u/s.151 CPC, whether it is along with other sections or otherwise a revision would indeed lie.

25. Under Order 43 Rule 1 CPC, an order under Order 9 Rule 9 CPC or Order 9 Rule 13 CPC is an appealable order. Invariably whenever a petition is filed to set aside the default order or ex parte decree, Sec.151 CPC is also quoted along with Order 9 Rule 9 CPC or Order 9 Rule 13 CPC. Merely because Sec.151 CPC is quoted along with Order 9 Rule 9 or Order 9 Rule 13 CPC, an order does not become a revisible order on the ground that appeal does not lie from such an order. Similarly, if the petition in E.A.No.14 of 2011 were an exclusive petition u/s.151 CPC, a revision would indeed have lied, since no appeal would lie from an order in a petition u/s.151 CPC.

26. Needless to point out that an order u/s.144 CPC is a decree, in view of the definition of decree u/s.2(2) CPC. Sec.96 CPC envisages that an appeal would lie from every decree with certain exceptions. Sec.144 CPC does not fall within the exception u/s.96 CPC. Consequently, an order in a petition u/s.144 CPC is an appealable order. There is no doubt about the law in this regard. The learned counsel for the petitioner indeed accepts that an appeal lies from an order in a petition u/s.144 CPC. His contention is that E.A.No.14 of 2011 was not an application u/s.144 CPC but was an application u/s 144 r/w Sec.151 CPC and that since appeal does not lie from an order u/s.151 CPC, the order in E.A.No.14 of 2011 is liable to be examined in the revision.

27. As already pointed out, I am afraid that merely because E.A.No.14 of 2011 is an application u/s.151 CPC along with other provision, it cannot be considered to be a petition u/s.151 CPC subjecting its orders to revision. It needs to be examined whether the petition in E.A.No.14 of 2011 is a petition u/s.144 CPC or a petition analogous to Sec.144 CPC only. The prayer in E.A.No.14 of 2011 reads:

For the reasons stated in the accompanying affidavit, it is prayed that this Hon''ble court may be pleased to restore the EP schedule property to me by giving back the possession and pass such other orders this Hon''ble court may deed fit and proper, in the interest of justice.

28. Evidently, the petitioner seeks for restitution under this petition. I, therefore, agree with the contention of the learned counsel for the respondents that E.A.No.14 of 2011 is a petition u/s.144 CPC or is primarily a petition u/s.144 CPC. Once E.A.No.14 of 2011 is a petition u/s.144 CPC, an appeal would lie therefrom. Section 115 CPC provides for a revision where an appeal does not lie.

29. Inter alia, the learned counsel for the respondents contended that this revision is not maintainable u/s.115 CPC. It is contended that the petitioner is not seeking for the examination of the execution Court on the ground that the execution Court exercised its jurisdiction illegally or with material irregularity. His contention is that assuming that the order in E.A.No.14 of 2011 was an order on a petition u/s.151 CPC, a revision would have been maintainable under Article 227 of the Indian Constitution. Article 227 of the Indian Constitution confers wide powers of superintendence of the courts upon the High Court. I may clarify at the outset whether this petition would be maintainable u/s.115 CPC or would become maintainable under Article 227 of the Indian Constitution assuming that a revision lies from the orders in E.A.No.14 of 2011. In The Executive Officer, Arthanareswarar Temple Vs. R. Sathyamoorthy and Others, the court observed that the question whether the District Court has wrongly decided the jurisdictional fact or not is a question, which can be considered u/s.115 CPC. However, in Janaki Bohidar and others Vs. Pradip Kumar Bohidar and others, , where the appellate Court took a different view from the view taken by the trial Court and reversed the decision of the trial Court, a revision was held to be not maintainable in the absence of any jurisdictional error on the part of the appellate Court, albeit the appellate Court wrongly appreciated the evidence. In Chunnilal v. Shanta Devi AIR 2001 Rajasthan 76 , it was observed that the maintainability of a revision depends on two conditions viz., i) decision of the court was from a court subordinate to the court and that ii) no appeal lies from the decision of the subordinate court. Both these conditions are satisfied in the present case. However, a revision is maintainable only upon three further circumstances envisaged in Sec.115(a), (b) and (c). In the absence of fulfilment of any one of these conditions, revision is not maintainable under Sec.115 CPC, albeit the conditions envisaged by Chunnilal are made out.

30. When a petition is not maintainable u/s.115 CPC, the Supreme Court in Col. Anil Kak (Retd.) Vs. Municipal Corporation, Indore and Others, held that the High Court could convert a revision petition u/s.115 CPC into a revision under Article 227 of the Indian Constitution on its own motion. It is evident that if this revision is not maintainable u/s.115 CPC, it can be considered under Article 227 of the Indian Constitution. I do not consider that the High Court can be bogged down by mere procedural rules as in England in the olden days. Salmond On the Law of Torts (17th edition) started the textbook by referring to ''the forms of action''. He quoted Sir Henry Maine, who pointed out: "so great is the ascendancy of the law of actions in the infancy of courts of justice, that substantive law has at first the look of being gradually secreted in the interstices of procedure". Salmond refers to Common Law Procedure Act, 1852, which provided ''it shall not be necessary to mention any form or cause of action in any writ of summons''.

31. I believe that the High Courts in India never suffered from this problem of form of action. As long as the relief sought for is permissible, more or less the High Courts proceeded on the strength of the maxim ubi jus ibi remedium (where there is a right, there is a remedy). Day in and day out, Writs ought to have been filed for a relief of Mandamus are filed as Writs of Certiorari and vis-a-vis. The High Court, however, grants the relief, which the petitioner is entitled to if the petitioner is entitled to the relief sought for, ignoring whether the petitioner laid Writ of Certiorari or Writ of Mandamus. I consider that same is the position with a revision filed u/s.115 CPC and under Article 227 of the Indian Constitution. So long as the relief in the revision is permissible, the revision deserves to be maintained.

32. I, therefore, cannot accept the contention of the learned counsel for the respondents that this revision is liable to be dismissed in limine on the ground that revision is not maintainable u/s.115 CPC assuming that a revision would lie from the impugned order. However, I am afraid that an appeal lies from the impugned order for the reasons already explained, so much so, the very revision is not maintainable.

33. I am tempted to answer the questions raised by Sri K.V. Satyanarayana, learned counsel for the petitioner with reference to petition under Order 5 Rule 20 CPC, Order 21 Rule 22 CPC and the definition of a decree u/s.2(2) CPC. However, where a revision is not maintainable but an appeal would lie, any finding on these points may effect the cause of either side in an appeal. I, therefore, am constrained to restrain myself from reacting to the erudite submissions of Sri K.V. Satyanarayana, learned counsel for the revision petitioner.

34. The learned counsel for the revision petitioner contended that notice ought to be issued under Order 21 Rule 22 CPC, as the execution petition was laid more than two years from the date of decree. On the other hand, the learned counsel for the respondents contended that the date of the decree shall be computed as 22.03.2010 on which date A.S.No.80 of 2008 arising from O.S.No.5109 of 2004 was dismissed for default and that as E.P.No.64 of 2010 was filed on 15.04.2011 in less than a month

after the decree in A.S.No.80 of 2008 and that Order 21 Rule 22 proviso empowers the plaintiffs-respondents (herein) to execute the decree without notice to the judgment debtor.

1. Proviso to Order 21 Rule 22 CPC reads:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

36. The State of Andhra Pradesh and Kerala followed the Madras Amendment. There is some confusion regarding the State Amendments. So far as the State Amendment dated 05.11.1968 is concerned, the proviso is maintained. It would appear that the Madras State brought Order 21 Rule 22(1)(a) CPC and also incorporated a proviso after Order 21 Rule 22(2) CPC, through Amendment dated 13.10.1936. The learned counsel for the petitioner contended that the State Amendment excluded provision to Order 21 Rule 22 CPC. That would not appear to be correct. The importance of the proviso is that the proviso ordains the decree holder to take out notice to the judgment debtor in the event the decree is sought to be executed beyond two years from the date of decree.

37. Sri M.V.S. Suresh Kumar, learned counsel for the respondents/decree holders inter alia contended that the State Amendment was overruled by the Central Act and that where the Central Act was subsequent to the State Amendment, the Central Act would prevail. As already noticed, CPC was substantially amended in 1977 and 2002. While 2002 amendments did not touch Order 21 CPC, 1977 Amendment dealt with certain provisions under Order 21 CPC as well. In fact Order 21 Rule 22 CPC was amended in part by 1977 Amendment. So far as the proviso is concerned, the Rule prior to 1977 Amendment was that notice under Order 21 Rule 22 CPC was mandatory if the execution was taken out beyond one year from the date of the decree. It was amended through 1977 Amendment bringing out that notice is necessary when the execution was beyond two years only from the date of the decree. Therefore, application of Article 246 of the Indian Constitution and deciding which provision prevails over may not be relevant. However, I may make it clear that in view of Articles 246, 248, 251 and 252 as well as 254 of the Indian Constitution, if the Parliament legislates on any matter relating to the Concurrent List of the 7th Schedule, the legislation made by the Parliament would prevail over the State Legislation. If a State Legislation intends to make a legislation contrary to the Central Legislation in respect of the Concurrent List, the assent of the President is necessary. The State Amendments to Order 21 Rule 22 CPC occurred in 1936 and

1968. The Central Legislation was made in 1977. CPC is entry No.13 of the Concurrent List of the 7th Schedule. Consequently, the Central Legislation would prevail over the State Governments to the extent the Central Legislation is contrary to the State Amendment. I may, however, make it clear that Tamilnadu as well as the Andhra Pradesh did not touch proviso to Order 21 Rule 22(1) CPC. The question of the amendment of the Parliament prevailing over the State Amendment, therefore, has no application. The proviso as referred to already exists in the State even after the State Amendment of Order 21 Rule 22 CPC.

38. Under Order 21 Rule 22 CPC, notice, if the execution is beyond two years from the date of the decree, is mandatory. I do not intend to go into the question whether such a notice was given and what was the effect of affixture of such notice under Order 21 Rule 22 CPC, as these questions would fall for consideration in the main appeal, which shall be decided by the appellate Court, in the event the judgment debtor prefers an appeal.

39. I have concluded that the impugned orders in E.A.No.14 of 2011 are appealable orders. Consequently, revision u/s.115 CPC does not lie. I also do not consider it appropriate to entertain this petition under Article 227 of the Indian Constitution, where the petitioner has a chance of making exhaustive submissions before the appellate Court.

40. This revision is misconceived and is liable to be dismissed. However, where an appeal would lie, I consider it appropriate to dispose of the revision with a direction that the revision petitioner shall approach the concerned appellate Court on or before 31.12.2011. The period of prosecution of the revision shall be condoned for computing limitation for appeal from the impugned order before the appellate Court.

41. The Civil Revision Petition is ordered accordingly directing the revision petitioner to approach the concerned appellate Court on or before 31.12.2011. In the event the petitioner approaches the appellate Court, the appellate Court shall consider the case of the revision petitioner without influenced by any part of this order. However, there shall be no order as to costs.