
(2001) 03 AHC CK 0022
In the Allahabad High Court
Case No : Civil Revision No. 26 of 2001

Anil Kumar and another	Vs	APPELLANT
Sri Chandra Shekhar Azad University, Kanpur and others		RESPONDENT

Date of Decision : 20-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 2 AWC 1382 : (2001) AWC 1382

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Rajiv Gupta, for the Appellant;

Judgement

B.K. Rathi, J.—This revision has been preferred against the order passed in Misc. Appeal No. 113 of 2000 by which the matter has been remanded for re-decision of application 6C. The Stamp Reporter has reported that In view of the decision of Full Bench of this Court in the case of Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others, , the revision is not maintainable.

2. I have heard Sri Rajiv Gupta, learned counsel for the revisionists.

3. The learned counsel has referred to the decision of Hon''ble D. K. Seth. J. dated 21.12.1999 passed in Civil Revision No. 540 of 1999. In this case, the above decision of the Full Bench was distinguished and it was observed that the revision against the order passed in the exercise of revisional jurisdiction by the court below is not maintainable. That the power of this Court under Article 227 of the Constitution of India has no relevance with regards to the words "case arising out of the original suit" as used in Section 115, C.P.C. as it is a constitutional remedy. Therefore. in similar circumstances Hon''ble D. K. Selh, J., has held that the revision is maintainable.

4. I have gone through the judgment of Hon''ble D. K. Seth. J., and the decision of the Full Bench of this Court. The ratio of the decision of Full Bench of this

Court has been mentioned in para 23 of the judgment, which reads as follows :

"23. It is settled law that a judicial order passed by the trial court merges in the order passed by the appellate or revisional court ; Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, . How can it be said that an appellate or revisional decision in which the decision of the trial court has merged, is still a case arising out of the original suit. After merger, that case. i.e.. the decision arising out of the original suit vanishes. The decision of the appeal or revision brings into existence a case which can properly be said to be arising out of the appeal or revision. The decision of an appeal or revision is hence not amenable to the revisional jurisdiction u/s 115 even after the amendment in 1973."

5. On the perusal of the judgment of the Full Bench, the distinction which has drawn by Hon"ble D. K. Seth. J., is available in writs filed under Articles 226 and 227 of the Constitution of India. The revision u/s 115, C.P.C. does not lie against such order by mentioning Article 227 also. The present revision is u/s 115. C.P.C. and is not a writ petition under Articles 226/227 of the Constitution of India. The finding of Hon"ble D. K. Seth. J.. in the above matter is correct that the writ petition under Articles 226/227 of the Constitution of India is maintainable. However, this revision is not maintainable.

6. Sri Rajiv Gupta at the end has argued that in case it is found that the revision is not maintainable, he may be permitted to file a writ petition against the order.

7. In view of the above, the revision is disposed of finally with the direction that the applicants are at liberty to file a writ petition against the impugned order. For that purpose the certified copies filed in this case may be returned to the learned counsel.