

**(1972) 11 DEL CK 0006**

**In the Delhi High Court**

**Case No : Civil Revn. No. 304-D of 1966**

Ashok Kumar

APPELLANT

Vs

L. Faqir Chand and Others

RESPONDENT

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**Date of Decision : 28-11-1972**

**Acts Referred:**

**Citation : AIR 1973 Delhi 232 : (1973) 1 ILR Delhi 833**

**Hon'ble Judges : P.S. Safeer, J**

**Bench : Single Bench**

**Advocate : S.N. Chopra and Vijay Krishan, for the Appellant;**

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## **Judgement**

1. This petition arises out of a suit filed on 14th December, 1953. by the present petitioner. On the same date he filed an application u/s 20(b) of the CPC for permission to sue the defendants at Delhi. The application was dismissed by the Trial Court and the impugned order, for the reasons give therein, did not reverse the order of the trial Court and it was held by the Additional District Judge that the suit was such that it should not be allowed to be continued in Delhi.

2. In order appreciate the contentions raised before me it may be noticed that the petitioner Ashok Kumar filed the suite disclosing through the pedigree-table given in paragraph 2 of the plaint that he was the son of defendant No.6 Munshi Ram and that defendants 3, 4, and 5 were his real brothers. Defendant No.1 Faqir Chand belonged to the other branch of the family and so did his brother Banwari Lal defendant No.2. The plaintiff came to Court with the allegations that he was a member of the coparcenary and Munshi Ram also being its member had been running with the joint family funds as business under the name and style of "Munshi Ram B.Sc." It was further urged that Munshi Ram having fallen under the influence of his natural father Faqir Chand and his uncle Banwari Lal had begun to give away large sums of money to them without the consent or knowledge of his sons who formed the joint Hindu family with him . In paragraph 7 of the plaint it was legged alleged that in October. 1946. defendants Faqir Chand and Banwari La had followed Munshi Ram to Delhi and in consequence of

a plot hatched there on 30th October, 1946 a document had been signed which purported to be an agreement to refer the disputes to arbitration and that in terms of that document Shri Prem Nath Agarwal, Advocate of Ferozepur, was appointed the sole arbitrator. It was pointed out that the alleged agreement to refer to arbitration was a queer document inasmuch as it authorised the arbitrator to determine the matters in controversy even in the absence of the other party. In a paragraph 8 it was stated that the arbitrator made the award and some of the details of the award were given. In paragraph 10 the plaintiff stated that the award made by the sole arbitrator was made the rule of the Court by a Sub-Judge First Class Ferozepore. In paragraph 12 the plaintiff disclosed that Munishi Ram had paid same installment in terms of the award which had been made into a decree. In paragraph 13 of the plaint details of the properties which were being attached and brought to sale were given. All these properties were in Ferozepore.

3. The plaintiff-petitioner's right to suit is visible from the averments contained in paragraphs 14, 15 and 16 of the plaint. He alleged that he was a coparcener and as such had asked the defendants many times to refrain from executing the decree obtained fraudulently and collusively as the same was not binding on the joint Hindu family of which the plaintiff was a member.

4. In the course of the litigation an application was filed by one Shri Krishan Chand for being substituted as a legal representative of Banwari Lal defendant No.2 who had died. The application was made during the pendency of Regular Civil Appeal No. 99 of 1965 before the Additional District Judge, Delhi. Pleaded as a legal representative on a will. By the order dated the 11th of March, 1966, he was allowed, to be impleaded as a legal representative of deceased Banwari Lal defendant No.2 and as such became a defendant to the suit. No remedy was invoked against that order.

5. At the very outset I pointed out to the learned counsel appearing for the petitioner that Section 115 of the CPC does not contemplate that a single revision petition within its scope be preferred against several orders. It is not the law that if there are two orders a single revision petition will be competent against them. If that was so, then there would be nothing standing in the way of filing a single revision petition against twenty orders. In the opening page of this revision petition the claim urged was that the judgment dated 11th March, 1966 and 14th March 1966 be set aside. I gave the choice to Mr. Vijay Krishan appearing for the petitioners to impugn a particular order so as to maintain the petition within Section 115 of the said Code. The counsel submitted that his petition is directed against the order dated the 14th March, 1966. In that situation it is to be concluded that Krishan Chand was rightly impleaded as one of the legal representatives of deceased Banwari Lal defendant No.2. He was arrayed amongst the respondents when this petition was filed by Ashok Kumar. It is urged by Mr. Vijay Krishan that Krishan Chand's right to be impleaded as a legal representative was based upon a will and was a personal right and it

expired with his death. Be that as it may, it is to be seen whether the impugned order upholding the dismissal of the application filed u/s 20(b) of the Code can be interfered with within the scope of Section 115 of the Civil Procedure Code. It is submitted by the counsel for the petitioner that Krishan Chand having died, one of the reasons recorded in the impugned order that he was the contesting defendant and was opposing the trial of the suit at Delhi is no longer available. That was not the only reason for which the application u/s 20(b) of the Code was disallowed. The primary consideration was that the properties were situated in the Ferozepore.

6. In order to see whether an order suffers from any jurisdictional infirmity within the scope of Section 115 of the Code the High Court must scrutinise the order in the light of the circumstances in which it was made. At the time. When the impugned order was made. Krishan Chand was a contesting defendant. The tow cases cited before me i.e., Union of India v. R.C. Jall . Air 1968 MP 425 and Jaichand Lal Vs. Firm Kesrichand Bhanwarlal and Others, , do not help the present petitioner. The Madhya Pradesh High Court in paragraph 26 of the judgment observed :--

"We do not. however express any opinion was to the effect the constitutional changes will have upon the array of parties in a civil suit; but the request which has been made and which was not opposed is proper and we allow it."

The request in that litigation was not opposed. In this litigation before the impugned order was passed Krishan Chand appeared and opposed the granting of permission to institute the suit at Delhi. His opposition was on the basis that the properties sought to be attached and sold in execution of the impugned decree were situated in Ferozepore. As enunciated by the Federal Court in AIR 1941 5 (Federal Court) , the hearing of an appeal according tot he procedural law is in the nature of the re-hearing of the suit. The learned counsel appearing for the petitioner urges that the authority applies also to revision petitions and for that reason subsequent events and changes in law can be taken into consideration. The proposition would. however, operate differently in the circumstances of each litigation. in case of a regular first appeal it would apply differently and so would be the case when this Court is dealing with an appeal preferred within Section 100 of the Civil Procedure Code. In the peculiar circumstances in which a Court exercises its jurisdiction to refuse an application u/s 20(b) of the CPC the jurisdictional infirmity must be found in the order as on its date. If it is found that the Court acted in competent exercise of its jurisdiction. subsequent events. If taken into consideration, would not authorise the High Court to become a substitute for High Court to become a substitute for the trial Court to deal afresh with the application preferred u/s 20(b) of the Civil procedure Code.

7. That apart having gone through the plaint and having heard the counsel at length I come to the conclusion that the award was made by an Advocate of Ferozepore., was filed in a Court at Ferozeporte and was made into a decree by a

Sub-Judge functioning at Ferozepore. The challenge in the suit is really to the agreement to refer to arbitration allegedly made in Delhi but if the agreement had remained just what it was it would have been of no consequence. The said agreement resulted into a reference and Section 20(b), CPC does not authorise the Court to inquire into the validity of the reference. The reference gave birth to an award and the award was filed in a Court at Ferozepore and was made into a decree. The immovable properties sought to be attached and sold, according to the averments in the plaint, are situated at Ferozepore. The challenge to the award and the decree would best be made at Ferozepore. I do not find any jurisdictional infirmity in the impugned order. The petition is dismissed, but without costs.

8. The plaint may be returned to the petitioner for presentation to the proper Court and for that purpose he may appear before the trial Court on the 23 rd of December, 1972.

9. Petition dismissed.