

(2016) 04 MAD CK 0071

In the Madras High Court

Case No : C.R.P.(PD) No. 4229 of 2015 and M.P. No. 1 of 2015.

Asset Reconstruction Company (India) Ltd.

APPELLANT

Vs

S. Syed Mohammed Aliar

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2016) 167 AIC 446 : (2016) 4 MLJ 400

Hon'ble Judges : P.R. Shivakumar, J.

Bench : Single Bench

Advocate : V.V. Sivakumar, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. Though the respondent was served with a notice, he has not chosen to enter appearance either in person or through counsel. The respondent's name has been printed in the cause list. Still, he has chosen to remain absent and left the matter without representation on the previous date of hearing and also today. Hence, this Court deems it appropriate to pass an order after hearing the submissions to be made on behalf of the petitioner and upon perusing the relevant materials.

2. This petition has been filed under Article 227 of the Constitution of India against the order dismissing an application filed under Order 7, Rule 11 of C.P.C. praying for the rejection of the plaint on the ground that the suit was barred under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Naturally, such a petition was filed under Sub Clause [d] of Rule 11 under Order 7 of C.P.C. The learned trial Judge, after hearing both sides, chose to dismiss the said application by order dated 04.08.2015, which is impugned in the present Civil Revision Petition.

3. The present Civil Revision Petition has not been filed under Section 115 of C.P.C., but under Article 227 of the Constitution of India. Normally, when there is

an effective and efficacious alternative remedy, invocation of power of superintendence under Article 227, which is equivalent to the extraordinary jurisdiction of Article 227 of the Constitution of India shall not be encouraged. In such cases, the Court by the rule of self-imposed restraint, shall decline the relief. The present case on hand is one in which, the petitioner could have filed a regular revision under the provisions of Code of Civil Procedure.

4. Now-a-days, there is an increasing tendency to disregard the relevant provisions in the Statutes, under which the reliefs could have been sought for and to simply file a petition under Article 227 of the Constitution of India for each and everything. Such a tendency should be curbed and nipped at the bud. As against the order passed under Order 7, Rule 11 of C.P.C., if it results in the rejection of the plaint, an appeal will lie. On the other hand, if it results in the dismissal of such an application, it squarely falls within the ambit of Section 115 of C.P.C. dealing with the revision. The case of dismissal of an application under Order 7, Rule 11 of C.P.C. does not fall under the mischief of the Proviso to Clause (1) of Section 115 of C.P.C.

5. Learned counsel for the petitioner wanted to impress upon the Court, that when a Court exercises a jurisdiction which is not conferred upon it, there is no other go than to approach the High court under Article 227 of the Constitution of India for a relief against such an order passed by a Court having no jurisdiction in the matter. The said submission does not seem to be tenable. For the purpose of elucidation, Section 115 of C.P.C. is reproduced.

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.)

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

Explanation. - In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.

Clause [1][a] specifically deals with an order of a Court passed in exercise of a jurisdiction which is not vested on it by law. Clause [1][b] deals with the failure of a Court to exercise a jurisdiction vested on it. Clause [1][c] deals with an exercise of jurisdiction by a Court illegally or with material irregularity. A reading of those three clauses will make it clear that a revision under the said provision of C.P.C. is confined to exercise jurisdiction not conferred on the court, failure to exercise jurisdiction conferred on the court or exercise of such jurisdiction illegally or with irregularity alone and does not cover any other matter.

6. In the presence of a specific provision under Section 115 of the C.P.C. dealing with revision, which also provides a restriction in its application, invocation of the power of superintendence under Article 227 of the Constitution of India as an alternative method for challenging an order of the Subordinate Court, when such order can be challenged by way of a revision under Section 115 of the C.P.C, shall not be proper. Hence the contention of the learned counsel for the petitioner that no revision can be filed under the provisions of the C.P.C. when the court below fails to exercise a jurisdiction conferred on it or exercised a jurisdiction not conferred on it and that the only recourse available to the aggrieved person shall be to invoke the power of superintendence of the High Court under Article 227 of the Constitution of India, cannot be countenanced.

7. In fact Section 115 of the Code of Civil Procedure, 1908 deals with the case of failure on the part of the court below to exercise jurisdiction conferred on it, the exercise of a jurisdiction by the Subordinate Court which is not conferred on it and the exercise of jurisdiction conferred on it illegally and with material irregularity. All the grounds on which such revision can be filed under section 115 of the Code of Civil Procedure, 1908 are touching the jurisdiction of the court below. As such, the contention of the counsel for the petitioner that the order of the court below can be challenged only under Article 227 of the Constitution of India cannot be sustained.

8. The further contention of the counsel for the petitioner to the effect that even the availability of such an alternative remedy shall not be a bar for invocation of the power of superintendence under Article 227 of the Constitution of India also cannot be countenanced. In a catena of cases, almost all the High Courts and the Supreme Court have held that in case of challenge to orders passed by the subordinate courts or by the Administrative or Quasi-Judicial Authority, the self-imposed restriction not to exercise the extraordinary power of the High Court under Article 226 of the Constitution of India or the power of superintendence under Article 227 of the Constitution of India shall get attracted, barring cases in which violation of fundamental rights or enforcement of fundamental rights is involved. If everyone is allowed to bypass the procedure provided in the statute passed by the legislature and invoke such extraordinary jurisdiction or the

supervisory jurisdiction, then the provision found in the statute, in this case Section 115 of the Code of Civil Procedure, 1908, will be reduced to a dead letter. Above all in the concerned provision of the Civil Procedure Code, 1908, namely Section 115, an embargo has been provided under the proviso to sub clause (1) for the exercise of the power of revision. The proviso states that no revision shall be entertained by the High Court, if the order challenged had otherwise been in favour of the person filing the revision, it would not have resulted in the termination or final disposal of the proceeding before the court below. Such a bar is not attracted in the present case. The order challenged is one passed dismissing the application filed under Order 7, Rule 11 CPC filed for rejection of the plaint. If the order had been in favour of the revision petitioner, it would have resulted in the rejection of the plaint, which would be the termination of the proceeding before the trial court. Hence the bar provided in the proviso does not get attracted to the case in hand.

9. Even otherwise when such a restriction in the power of revision is provided under Section 115 of the Code of Civil Procedure, 1908, the parties cannot be allowed to neglect or disregard the said provision, by bypassing the same in order to avoid the attraction of such a bar, invoke the power of superintendence of the High Court under Article 227 of the Constitution of India and there by expand the scope of such revision. If this court entertains the revision under Article 227 of the Constitution of India, it will amount to making the provision found in Section 115 of the Code of Civil Procedure as a dead letter in the statute.

10. Of course it is true that quoting a wrong provision shall not be the sole ground on which one shall be denied the relief and the court can, in appropriate cases, grant the relief treating the petition as one filed under the proper provision of law. Though this court could have treated this petition as one filed under Section 115 of the Code of Civil Procedure, this court does not want to do so, as it wants to discourage repetition of the same by like minded people by bypassing Section 115 of the Code of Civil Procedure and invoking Article 227 of the Constitution of India. Hence this court deems it appropriate to dismiss the revision filed under Article 227 of the Constitution of India.

11. Accordingly, the civil revision petition is dismissed. However liberty is granted to the petitioner to file a regular revision under proper provision. No cost. Consequently, the connected miscellaneous petition is closed.