

(2003) 02 BOM CK 0073

In the Bombay High Court

Case No : Civil Revision Applications No's. 1 and 145 of 1992, 557, 684, 339, 946, 951, 953, 1111, 1129 and 1156 of 1993, 1145 of 1994 with 32, 86, 852, 1037, 1144 and 1227 of 1995, 108,706, 842, 873, 970 of 1996, 145, 229, 256, 260, 369, 413, 424, 454, 478, 517,

Babasaheb Sule and Jalindar Sule

APPELLANT

Vs

Asruba Sule, Dashrath Sule, Abibai Sule, Dnyanoba Sule,
Bayaji Sule, Jijaba Sule, Mohan Sule and Sakharbai Pokale

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 115, 115(1)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1
Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 6

Citation : (2003) 02 BOM CK 0073

Hon'ble Judges : A.P. Deshpande, J

Bench : Single Bench

Advocate : S.P. Deshmukh, for the Appellant; R.M. Borde and D.N. Kolhe for respondent No. 4 and U.B. Binwade, for the Respondent

Judgement

A.P. Deshpande, J.—A common question of law about the maintainability of the Revision Petitions directed against interlocutory orders cropped up after the Parliament introduced extensive amendment to the CPC by Amendment Act of 1999, which has come into force w.e.f. 1-7-2002. As the said question emerged repeatedly in various matters, I had directed the Registry to identify cases, wherein identical issues are involved and pursuant to the said direction, the office has placed on Board aforesaid matters, wherein a common question of maintainability of the Revision Petitions arises for adjudication. I have heard the learned Advocates appearing for the Revision Petitioners, so also the learned Advocates representing the respondents. The petitions are taken in two groups. Group A denote petitions which are admitted and pending final hearing and Group B denote cases which are at admission stage. All the petitions are being decided by this common order.

2. All the Revision Petitions are arising out of the orders passed by the Trial Court under Order 39 Rule 1 and 2 of C.P.C., either granting or refusing injunction, which orders are carried in Miscellaneous Appeals before the District Judge under Order 43 Rule 1(r) of the C.P.C. The First Appellate Court, in these matters, has either confirmed the order passed by the trial Court by granting or refusing injunction and/or has reversed the order. To decide the question of maintainability of the Revisions, it is required to be first ascertained as to whether the orders impugned are interlocutory in nature or otherwise. The said question is already answered by the learned Single Judge of this Court (Justice V.G. Palshikar) in a judgment reported in 2002(4) M.L.J. 615 " Nagorao @ Arun s/o. Narayan Yerawar and others Vs. Narayan Nagan Yerawar and another" It is held by the learned Single Judge that, " the position of an order under Order 39 is, in my opinion, identical. The principal contentions raised by different parties in the suit regarding the subject matter for which the interim order is made are yet to be decided. The findings recorded by the learned trial Court or the appellate Court under Order 43, Rule 1 are prima facie findings dealing with the continuation or discontinuation of a temporary injunction granted or not granted. There can, therefore, be no doubt that the order under Order 39 CPC is a temporary order."

The learned Single Judge has proceeded to further observe, " What is contemplated by section 115 as amended in 2002 is that the order should be such if made in favour of the revision applicant would have finally disposed of the suit or other proceedings. The Civil Suit in which temporary injunction is granted or not granted is not decided finally either by grant or refusal thereof and continues to pend. Taking into consideration this aspect of the matter, therefore, it cannot be said that merely because the revision application is directed against an order passed by appellate Court finally deciding the Misc. Appeal under Order 39, Rule 1 read with Order 43, Rule 1, C.P.C., the revision is maintainable. What is now necessary after July, 2002 for maintaining a revision is that the order impugned in revision must have the effect of finally disposing of the suit or proceedings in favour of the person who applies for revision. By very nature of things and the nature of Order 39 itself, such a contingency cannot occur and consequently, a revision application whether against an appellate order or original order granting or refusing injunction is not maintainable after 1.7.2002."

So the test laid down in the said judgment for a revision to be maintainable is that the interlocutory order impugned in revision if set aside must have the effect of finally disposing of the suit or proceedings in favour of the person, who applies for revision. In order to appreciate the test laid down in the judgment, I proceed to refer to the provisions of Section 115 as amended by the Amendment Act No. 46/1999, which has come into force w.e.f. 1-7-2002, which is as under :

"S. 115(1) The High Court may call for the 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."

The interpretation of the proviso which is couched in a negative form, would provide the answer to the question. The proviso lays down 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. So, the test is laid down as to when the High Court can interfere with the interim order passed by the Court below and it categorically lays down that had the order impugned been passed in favour of the aggrieved party, it would have finally disposed of the suit or other proceedings, In this situation alone revision against an interlocutory order would be maintainable and not otherwise.

I am in agreement with the view taken by the learned Single Judge in the case cited supra.

3. The next judgment dealing with the same question, is by the same learned Judge and it has been rendered prior in point of time than the judgment, referred to hereinabove. The learned Judge, while deciding the batch of petitions dealing with the identical question, in the case of "Rajabhau Rahate Vs. Dinkar Ingole" 2002(3) M.L.J. 921" has had an occasion to have a retrospect of the provisions contained in Section 115 of the C.P.C., as it stood prior to the Amending Act of 1976 and thereafter, with a view to find out the legislative intent, in amending the Civil Procedure Code, by an amending Act of 1999, which has come into force from 1st July, 2002. It is observed,

" Then, in 1999, again extensive amendments were made to the CPC including several reforms, all aimed at curtailing the delays in disposal of the litigation, to

which the CPC was applicable. It is also necessary to note that all the amendments of 1976 as also the amendment of 1999 or 2002 were basically made to substantially reduce the delay caused in disposal of the matter because of several procedural hurdles. Attempt was made to remove those hurdles in 1976. The revisional powers u/s 115 were circumscribed to an extent, but contemplated results did not occur and, therefore, further amendment was thought necessary in 2002."

After noting the legislative intention behind amending Section 115, the learned Judge proceeded to interpret the amended Section 115 and categorically held,

"Taking into consideration the above discussion and the ratio of the judgments cited above, I am of the view that :

(i) The provisions of Section 115 as amended with effect from 1st July, 2002 are applicable from that date to all proceedings pending in this Court u/s 115 of the Civil Procedure Code.

(ii) There is no right in a litigant to move an application u/s 115 of the CPC for exercise of jurisdiction mentioned therein.

(iii) That it being not a right as held above, there is no question of it being saved by course to provisions of Section 6 of the General Clauses Act, 1897.

(iv) The provisions of section 32(2)(i) do not either by direct legislation or by necessary implication save any such proceedings from being affected by the amendment with effect from 1-7-2002.

(v) As a consequence of the above, all revision applications, whether pending as on 1st July, 2002 or filed thereafter, will have to be dealt with strictly in accordance with the provisions of Section 115 of the CPC with effect from 1st July, 2002.

(Vi) As a further consequence thereof, no revision application against an interlocutory order will be maintainable even if the order is made prior to 1st July 2002 as moving this Court Section 115 is held not to be a right.

4. In view of the findings reached by the learned Single Judge that the provisions of Section 115 as amended w.e.f. 1-7-2002, are applicable from that date to all proceedings pending in this Court u/s 115 of the C.P.C., it is evident that all matters, whether filed prior to 1st July, 2002 or thereafter, need to be decided at the touch-stone of the amended provisions contained in Section 115 and if that be so, then, unless and until the very interlocutory order satisfies the test laid down in the proviso, i.e. if the impugned order had been passed in favour of the Revision Petitioner, would have resulted in termination of the suit or other proceedings, the revision would not be maintainable.

5. I also have assistance of 4 more judgments, touching the very question, and next I proceed to refer to the judgment by another learned Single Judge of this Court reported in 2002(4) M.L.J. 913 " Zahida Nizamuddin Dalal and others Vs.

Abidali Jaffer Ali Syied and others". The learned Judge has also interpreted the amended Section 115 having regard to the legislative intent. In para. 26 of the judgment, the learned Judge has observed,

"The whole purpose behind imposing restrictions upon the exercise of revisional powers being to curtail obstruction to the speedy disposal of the suit and having noticed the revisional interference being main cause for such obstructions, as already observed above, to interpret expression "other proceedings" to include supplementary proceedings in a suit will defeat the very purpose behind the incorporation of the said proviso to Section 115 of the Civil Procedure Code. The learned Judge has explained the judgment in "Rajabhau Rahate" reported in 2002(3) M.L.J. 921 (supra) and in para.37 of the judgment the learned Judge has concluded the issue by laying down that " Considering the law as stated above, the impugned order being an interlocutory order and any interference therein would not result in terminating of the suit, no revision lies against the same and this revision application therefore is liable to be rejected and is hereby accordingly dismissed."

So, the view taken by the learned Single Judge in "Rajabhaus case" has been endorsed with approval in " Zahida Nizamuddin & others Vs. Abidali Jafar and others " by Justice Khandeparkar.

6. The Karnataka High Court as well, in the judgment reported in K.R. Subbaraju Vs. Vasavi Trading Company, Bangalore and Others, , has interpreted Section 115 as amended by Act No. 46/1999 and has held that the revisional jurisdiction is materially restricted by the amendment. It is held that even if the order impugned suffers from jurisdictional error, the same cannot be interfered unless it be shown that if the impugned order was passed in favour of the party applying for revision, it would have finally disposed of the suit or other proceedings. The said judgment was in regard to an order passed under Order 6 Rule 17 i.e. amendment of the plaint and as the test contained in the proviso was not satisfied, the Court declined to interfere and held that the revision petition was not maintainable.

7. The next judgment is that of the Madhya Pradesh High Court. The learned Single Judge has held in Phool Singh Vs. Mavla @ Bhavaliya and Others, , that the scope of interference in revision is restricted by the proviso substituted by the Amending Act of 1999. In the said judgment, it is further held that the amendment applies to all cases pending, on the date on which the amendment act comes into force.

8. There is one more judgment dealing with the said question, reported in AIR 2002 All. 14. In paras.8 and 9 of the said judgment, the Court observed :

" I have considered the arguments. I am afraid that no relief can be granted to the revisionist in these revisions in view of the proviso added to Section 115 C.P.C. by Amending Act No. 46 of 2002 enforced w.e.f. 1-7-2002 which is as follows :

"....."(cited supra)

According to this proviso therefore, the order cannot be varied, reversed in the exercise of powers u/s 115 C.P.C. for the reason that had the order been made in favour of the revisionist it would not have finally disposed of the suits."

9. In the above referred judgments, the view is expressed by all the learned Judges holding that there is no right in the litigant, much less, a substantive right to approach the High Court u/s 115 of C.P.C. in its revisional jurisdiction. The jurisdiction of the High Court contained in Section 115 is the power of the Court and is not a right of the litigant.

In view of the above discussion, I am of the clear opinion that the present Revision Petitions challenging the interlocutory orders cannot be entertained in exercise of powers u/s 115 and to put it in other words, the Revision Petitions are not maintainable.

10. The learned Advocates appearing for the Revision Petitioners sought permission to convert the Revision Petitions into Writ Petitions under Article 227 of the Constitution of India. The question is, should this Court permit a revision to be converted into Writ Petition, is again, no longer open for a debate. In a judgment reported in 2002(4) M.L.J. 597 " Bharatkumar Agrawal Vs. M/s. Anita Trust through Ku. Preeti Patel and another", the learned Single Judge of this Court has held,

" Viewed from any point, therefore, it is not possible for me to accede to the request that Revision Application filed u/s 115 of the C.P.C. can be converted into a writ petition. After operation of the amended section 115, revision application must end. Proceedings must terminate as the petition is not maintainable. To entertain a not maintainable petition and say on it that it should be transposed as a writ petition to get the jurisdiction in order to nullify the legislative intent is such a course which the Supreme Court has positively disapproved in the case of " State of Himachal Pradesh Vs. Raja Mahendra Pal, Cited supra. When both the jurisdictions are co-existing and are available to the litigants, to say or to permit a litigant after six years of pendency or for that matter six years of pendency or for that matter six days of pendency of an application which by operation of law is not maintainable , be permitted to be made a petition under Article 227 would be setting at naught the legislative mandates."

11. So, basically if this Court has no jurisdiction to entertain a revision, this Court would be lacking a further jurisdiction to allow conversion of revision into a writ petition and in this view of the matter, I am not inclined to favourably consider the prayer made by the learned Advocates for the petitioners seeking conversion of the revision into a writ petition. Lastly, it was vehemently submitted by the learned Advocates for the petitioners that the petitioners are entitled to invoke the powers of this Court, by moving a petition under Article 227 of the Constitution of India as they contended that in most of the matters, the impugned orders suffers from error of law that is manifest on the face of the

record and in this situation, they would be entitled to agitate their grievance under Article 227 of the Constitution of India.

There is no doubt that amendment to Section 115 by Act No. 46/1999 will not affect the powers conferred on the High Court under Article 227, but the said power has to be exercised only in appropriate cases. It is submitted by the Advocates for the petitioners that the interim orders are operating for years and years, pending the revision petitions, and the same should be continued for a reasonable period, so as to enable the petitioners to move petitions under Article 227 of the Constitution, as otherwise, it would result in miscarriage of justice. No doubt, there is substance in the said contention. True it is, that power under Article 227 of the Constitution is analogous to the power of superintendence contained in Section 115 of the C.P.C. A power has been conferred on the High Court under Article 227 of the Constitution, to keep the subordinate courts within the bounds of their authority. The power of judicial review is enshrined in Article 226 and 227 of the Constitution and it is a part of the basic structure of the constitution and hence, amendment to Section 115 in no way, encroaches upon the power contained in Article 227 of the Constitution and the said power is wholly unaffected. I am not called upon to opine, while deciding these revision petitions, as to under which situation the High Court in exercise of power under Art. 227 would interfere with an order under challenge but, as it is evident, that a writ petition under Art. 227 would be maintainable even against an interlocutory order, which does not satisfy the test laid down in the proviso to Section 115 as amended. It would be in the interest of justice to continue the status quo for a limited period so as to enable the litigants to approach this Court in exercise of jurisdiction under Article 227 of the Constitution of India by moving an appropriate petition. To substantiate the last submission, the learned Advocates have placed reliance on the judgment reported in 2003(1) M.L.J. 275 "Prabhudas Gedam and another Vs. Municipal Council, Bhadravati", wherein the learned Single Judge has taken into consideration catena of Apex Court judgments including the judgment in "L. Chandrakumars case". Therefore, even if this Court has no jurisdiction u/s 115, still status quo is ordered for a reasonable time in exercise of inherent powers contained in Section 151 of the C.P.C.

12. In the result, the Revision Petitions (falling in Group A which are heard finally) are dismissed. Rule is discharged. There shall be no orders as to costs. Civil Applications , if any, filed in these revisions, stand disposed of. In so far as Revision Petitions (in Group B are concerned) the same are dismissed in limine / p> However, (in Group A and Group B matters) status quo as on today to continue for a period of 15 days.