
(2002) 07 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2233 of 2000

Gurdeep Singh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17A, 115

Citation : (2002) 07 P&H CK 0041

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : R.S. Bajaj, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J. 1. This revision petition has been filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity, "the Code") as amended upto date challenging the order dated 8.5.2000 passed by the Civil Judge (Jr. Division), Jalandhar dismissing the application of the plaintiff-petitioner for production of additional evidence under Order XVIII Rule 17-A of the Code.

2. Brief facts of the case which led to the filing of the present petition are that plaintiff-petitioner filed a suit for declaration to the effect that he is entitled to pension which has been illegally stopped by the defendant-respondents on the ground that he had been convicted in a criminal case. It is averred that he was not armed with a copy of the judgment passed in criminal case when he was adducing his evidence and he had filed an appeal in the High Court against the order of his conviction. The High Court modified the order converting the conviction into Section 304 of the Indian Penal Code, 1860. Even the judgment modifying the offence by the High Court was not traceable and, therefore, could not be produced. During the pendency of the suit, an application under order XVIII Rule 17-A of the Code was filed to bring on record those two judgments. However, the application was dismissed by observing that the plaintiff-petitioner is not entitled to lead any additional evidence once he himself closed his

evidence on 1.10.1999.

3. I have heard Mr. R.S. Bajaj, learned counsel for the plaintiff-petitioner and perused the impugned order. It would be appropriate to make a reference to the amended provisions of Section 115 of the Cede which have been given effect to with effect from 1.7.2002 and also Section 32(2)(i) which read as under:-

"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.]"

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CHAPTER IV REPEAL AND SAVINGS

32. Repeal and savings.- (1) xx xx xx

(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897), -

(a) to (h) xx xx xx xx

(i) the provisions of Section 115 of the principal Act, as amended by Section 12 of this Act, shall not apply to or effect any proceeding for revision which had been finally disposed of."

4. A perusal of above-quoted provisions would show that the amendment

incorporated by Section 12 of the Amendment Act, 1999 in Section 115 of the principal Act would not apply to or affect any proceedings in revision which have been finally disposed of. In other words, the proceedings which are pending u/s 115 of the Code before this Court and have not been finally decided; would be covered by the amendment. The revision petition could only be competent in cases where order challenged in the revision would have finally disposed of the suit or other proceedings. Therefore, by no stretch of imagination, the impugned order dismissing the application under Order XVIII Rule 17-A of the Code could be considered to have disposed of the suit or any other proceedings in the suit. However, non maintainability of the revision petition u/s 115 of the Code would not render the plaintiff-petitioner without a remedy because such objections would always be open for him to be taken at the stage of first appeal. If any such eventuality arises under Order XLIII Rule 1-A of the Code.

5. For the reasons recorded above, this revision petition fails being not maintainable. Liberty is given to the plaintiff-petitioner to raise objection to the order dated 8.5.2000 at an appropriate stage under Order XLIII Rule 1-A of the Code, if such an eventuality arises.