

(2017) 04 AHC CK 0191
In the Allahabad High Court
Case No : 95 of 2017

JAGDISH NARAYAN TANDON AND 3 OTHERS

APPELLANT

Vs

ONKAR NATH TANDON AND 10 OTHERS

RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 115](#) - Revision
[Bombay Rents, Hotel and Lodging House Rates Control Act, 1947](#),
[Section 50](#) - Repeal.

Citation : (2017) 04 AHC CK 0191

Hon'ble Judges : Ram Surat Ram (Maurya)

Bench : Single Bench

Advocate : Murli Dhar Mishra

Final Decision : Dismissed

Judgement

1. Heard Sri Murli Dhar Mishra, the counsel for the revisionists, on the maintainability of the revision.

2. This revision has been filed under Section 115, C.P.C. from the order of Additional District Judge dated 16.03.2017, rejecting the amendment application for amending the plaint, filed by the revisionists (who are the plaintiff-appellants), in Civil Appeal No. 36 of 2016 (arising out of O.S. No. 332 of 1998).

3. Section 115 C.P.C. as amended by U.P. Act No. 31 of 2003, w.e.f. 01.07.2002 is quoted below:- "Section 115. Revision.-

(1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has- (a) exercised a jurisdiction not vested in it by law; or (b) failed to exercise a jurisdiction so vested; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity. (2) A revision application under sub-section (1), when filed in the High Court, shall

contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court. (3) The superior court shall not, under this section, vary or reverse any order made except where,-

(i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made. (4) 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 superior court. Explanation I.- In this section,-

(i) the expression "superior court" means-

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees; (b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees;

(ii) the expression "order" includes an order deciding an issue in any original suit or other proceedings.

Explanation II.- The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement."

4. Prior to aforesaid amendment, Section 115 C.P.C. was amended by Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978, (U.P. Act No. 31 of 1978). Relevant portion is quoted below:- "Section 115. Revision.-

The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before August 1, 1978 and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any court subordinate to such High Court or District Court, as the case may be, and in which no appeal lies thereto, and if such subordinate court appears"

5. Aforementioned amended provisions of Section 115 C.P.C. in U.P. are different from Section 115 C.P.C. (Parliamentary Act). Relevant part of which is quoted below:- "Section 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"-

6. Remedy of revision as provided under Section 115 C.P.C. for Uttar Pradesh is from an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against that order. Order of Additional District Judge, passed in revision under Section 115 C.P.C. was further challenged in revision under Section 115 C.P.C. before this Court in *M/s. Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarika Dinesh Dayal*, AIR 1979 All. 218 (FB). Full Bench of this Court relying upon earlier Full Bench decision of this Court in *Har Prasad Singh Vs. Ram Swarup*, AIR 1973 All 390 (FB), held that the phrase "cases arising out of original suit" does not include decisions of appeals or revisions. The phrase "other proceeding" refers to the proceedings of original nature and cannot include decisions of appeal or revision. The phrase "other proceeding" have to be read ejusdem generis with the words original suit. It was held that revision under Section 115 C.P.C. is not maintainable from revisional order of subordinate court. This judgment of Full Bench has been affirmed by Supreme Court in *Vishesh Kumar v. Shanti Prasad*, AIR 1980 SC 892, holding that we are of opinion on the first question that the High Court is not vested with revisional jurisdiction under Section 115 of the Code of Civil Procedure, over a revisional order made by the District Court under that section.

7. The controversy as to whether the appellate order can be revised in U.P. under Section 115 C.P.C. came for consideration before Supreme Court in *Vishnu Awatar v. Shiv Autar*, AIR 1980 SC 1575, in which it was held that the legislature has continued to use the phrase "cases arising out of original suits". The interpretation placed upon this phrase by the Full Bench in *Har Prasad Singh's* case (supra) will apply. The revisional jurisdiction would hence not extend to cases arising out of the disposal of appeals or revisions by the District Court. The proviso is also in the same terms as the proviso added in 1973 namely, it uses the phrase "cases arising out of original suits or other proceedings". As already seen, it will not cover cases arising out of disposal of appeals or revisions. The words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added in order to bring within the purview of the revisional jurisdiction, the orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings" have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions.

8. Due to some contradictory observations of Supreme Court in *Qamaruddin Vs. Rasul Baksh*, 1990 AWC 308 (SC), the matter was again referred for consideration of Full Bench of this Court in *Ganag Saran Vs. Civil Judge*, AIR 1991 All. 114 (FB). The Full Bench after considering entire controversy afresh upheld and followed Full Bench's decisions in *Har Prasad Singh Vs. Ram Swarup*, AIR 1973 All 390 (FB) and *M/s. Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarika Dinesh Dayal*, AIR 1979 All. 218 (FB) and Supreme Court's decisions in *Vishesh Kumar v. Shanti Prasad*, AIR 1980 SC 892 and *Vishnu Awatar v. Shiv Autar*, AIR 1980 SC

1575 and held that revision under Section 115 C.P.C. is not maintainable against the order of appellate or revisional Court.

9. The counsel for the revisionist submitted that an appeal is continuation of suit. The phrase "other proceedings" used under Section 115 C.P.C. shall include the proceedings of appeal and revision also, for both the reasons namely it is continuation of the suit and it is other proceeding. He relied upon judgment of Supreme Court in Babu Lal v. Hazari Lal Kishori Lal, AIR 1982 SC 818. In this case the word "proceeding" as used in Section 22 of Specific Relief Act, 1963 came for consideration, which is quoted below:- "Section 22. Power to grant relief for possession, partition, refund of earnest money, etc.-(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief."

10. Supreme Court in Babu Lal v. Hazari Lal Kishori Lal, AIR 1982 SC 818, held that the word "proceeding" is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party". The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word "proceeding" in Section 22 includes execution proceedings also. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.

11. The remedy of revision is statutory remedy. A Constitution Bench of Supreme Court in Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78, held that conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are

creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. Thus the phrase "an appeal is continuation of suit or original proceeding", is used in a limited sense that the power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction.

12. Similar arguments were raised before Supreme Court for interpretation of Section 50 of Bombay Rents, Hotel Rates and Lodging House Rates Control Act, 1947. Under Section 50 of the aforesaid Act, pending suits on the commencement of the Act, were transferred to forum created in the Act and has to be decided according to the provisions of the Act. It was argued before Supreme Court that as the appeal is continuation of suit as such the appeal is also liable to be transferred and decided according to new provisions. Section 50 of this Act is quoted below:- 50. Repeal.-The Bombay Rent Restriction Act, 1939, and the Bombay Rents, Hotel Rates and Lodging House Rates (Control) Act, 1944, are hereby repealed:

Provided that all suits and proceedings between a landlord and a tenant relating to the recovery or fixing of rent or possession of any premises to which the provisions of Part II apply and all suits and proceedings by a manager of a hotel or an owner of a lodging house against a lodger for the recovery of charges for, or possession of, the accommodation provided in a hotel or lodging house situate in an area to which Part III applies, which are pending in any court, shall be transferred to and continued before the courts which would have jurisdiction to try such suits or proceedings under this Act or shall be continued in such courts, as the case may be, and all the provisions of this Act and the Rules made thereunder shall apply to all such suits and proceedings. Nothing in this proviso shall apply to execution proceedings and appeals arising out of decrees or orders, passed before the coming into operation of this Act; and such execution proceedings and appeals shall be decided and disposed of as if this Act had not been passed."

13. Supreme Court in Chandrasinh Manibhai v. Surjit Lal Ladhamal Chhabda, AIR 1951 SC 199, held that Section 50 merely provided for transfer of pending suits and proceedings to courts given jurisdiction under the Act to hear them and that from its ambit execution proceedings and appeals were excluded because no

question could arise of their being transferred from one court to another and that an appeal being a continuation of the suit and in the nature of a re-hearing, the provisions of Section 12 should be applied to pending appeals. On a plain reading of the language of Sections 12 and 50 it seems clear to us that the Act was given retrospective operation only to a limited extent and execution proceedings and appeals were excluded from this effect and were to be governed by the provisions of the law in force at the time when the decrees were passed. The concluding words of Section 50 "and thereupon all the provisions of this Act and the rules made thereunder shall apply to all such suits and proceedings" fully bear out this construction. Same ratio has been again followed in *Motiram Ghelabhai v. Jagan Nagar*, (1985) 2 SCC 279, in which it has been held that the question was whether on the principle that the appeal was in the nature of a rehearing of the suit the same should be decided in accordance with the provisions of the 1947 Act which had come into force during its pendency and this Court took the view that having regard to the proviso to Section 50 as it originally stood the Act was given retrospective operation only to a limited extent and execution proceedings and appeals were excluded from this effect and were to be governed by the law in force at the time when the decrees were passed and therefore, the tenant was not entitled to the protection of the 1947 Act and was liable to be evicted.

14. In view of the aforesaid discussions, I do not find any reason to doubt correctness of the decisions of three Full Benches of this Court as well as Supreme Court, holding that the words "or other proceedings" have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions. Present revision has been filed from the order passed by appellate court rejecting amendment application, filed in appeal as such the revision is not maintainable under Section 115 C.P.C. as amended in Uttar Pradesh.

15. The revision is dismissed. The office shall return certified copies of orders and formal order to the counsel for the revisionists after taking its photostat copy.