

(2002) 07 KAR CK 0002

In the Karnataka High Court

Case No : Civil Revision Petition No. 4569 of 2001

K.R. Subbaraju

APPELLANT

Vs

Vasavi Trading Company, Bangalore and Others

RESPONDENT

Date of Decision : 20-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 2002 Kar 407 : (2004) 2 BC 133 : (2002) 3 CivCC 353 : (2002) ILR (Kar) 3513 : (2002) 4 KarLJ 545 : (2002) 4 KCCR 2211 : (2002) 4 RCR(Civil) 603

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : H.N. Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—The defendant has preferred this civil revision petition u/s 115 of the Code of Civil Procedure. The suit is one for recovery of money and other consequential reliefs.

2. The plaintiffs had filed LA. No. 6 seeking amendment to the plaint for incorporating Clause 2(a), taking a stand that the plaintiffs instead of carrying on business as a partnership as originally pleaded, they were doing so as members of their Hindu undivided family. By the impugned order, the Court below has allowed the amendment. The question to be attended at the threshold is as to whether as a consequence of amendment to Section 115 of the CPC by the CPC (Amendment) Act, 1999. (46 of 1999), which has come into force with effect from 1-7-2002, the present civil revision petition is at all entertainable.

3. Section 115 of the CPC before its amendment by CPC (Amendment) Act, 1999 (46 of 1999) 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-

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

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

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.

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".

4. It may be worth to note here that the original Section 115 was renumbered as Sub-section (1) thereof by the CPC (Amendment) Act, 1976 (104 of 1976), with effect from 1-2-1977 and the proviso was added to the renumbered Sub-section (1). By this very amendment, Sub-section (2) was inserted after renumbered Sub-section (1). The statement of objects and reasons which was placed before the Parliament along with the Bill proposing the above amendment read as under:-

"Clause 43 (Original Clause 45),--By Clause 45 of the Bill, Section 115 of the Code was proposed to be omitted. The question whether it is at all necessary to retain Section 115 was carefully considered by the Committee. The Law Commission has expressed the view that in view of Article 227 of the Constitution Section 115 of the Code is no longer necessary. The Committee however, feel that the remedy provided by Article 227 of the Constitution is likely to cause more delay and involve more expenditure. The remedy provided in Section 115 is, on the other hand, cheap and easy. The Committee, therefore, feel that Section 115, which serves a useful purpose, need not be altogether omitted particularly on the ground that an alternative remedy is available under Article 227 of the Constitution.

The Committee however, feel that, in addition to the restrictions contained in Section 115, an overall restriction on the scope of application for revision against

interlocutory orders should be imposed. Having regard to the recommendations made by the Law Commission in its Fourteenth and Twenty-seventh Reports, the Committee recommend that Section 115 of the Code should be retained subject to the modification that no revision application shall lie against an interlocutory order unless either of the following conditions is satisfied, namely:-

(i) that if the order were made in favour of the applicant, it would finally dispose off the suit or other proceeding; or

(ii) that if the order, if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury.

The Committee feel that the expression "case decided" should be defined so that the doubt as to whether Section 115 applies to an interlocutory order may be set at rest. Accordingly, the Committee have added a proviso and explanation to Section 115".

5. Subsequently, the Parliament having noticed that litigants interested in delaying disposal of suits had been approaching High Courts under its revisional jurisdiction u/s 115 of the Code against each and every order passed by the Trial Court during the adjudicatory process just to stall the expeditious disposals. It was also noticed that by taking bare plea of the intention to file revision petition or the statement that it has been so filed, the Trial Courts were forced to stay their hands either under the executive instructions from some of the High Courts or by building pressure on the Trial Courts by the appearing Counsels. The Parliament accordingly thought it advisable to further curtail the scope of Section 115 and also to statutorily declare that mere intention to file revision petition or just filing of revision petition cannot be taken to be a ground for staying further progress of the suit.

6. Section 115 of the CPC, now on incorporating the amendments as made by the 1999 Amendment Act reads 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 off 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".

7. Section 32 of the Amendment Act provides for repeal and saving. Sub-section (1) and Clause (i) of Sub-section (2) of Section 32 are material for the present purpose. These sub-sections read as under:-

"32. Repeal and savings.--(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(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-

(a) to (h) xxxxx

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

(j) to (v) xxxxx

8. The purpose for making the above amendments are clearly discernible from the statement of objects and reasons which reads as under:-

"In terms of the Common Minimum Programme of the United Front Government, it was envisaged that a Bill on judicial reforms and disposal of pending cases within a period of three years may be introduced in the Parliament. With a view to keep the commitment given to the people of India so that a speedy disposal of cases may take place within the fixed time frame and with a view to implement the report of Justice V.S. Malimath, it was thought necessary to obtain the views of the State Governments on the subject also. In the Law Ministers' Conference held in New Delhi on 30th June and 1st July, 1997, the working paper on the proposed amendments to the Code of Civil Procedure, 1908 was discussed. On the basis of resolution adopted in the said Conference and with a view to implement the recommendations of Justice Malimath Committee, 129th Report of the Law Commission of India and the recommendations of the Committee on Subordinate Legislations (11th Lok Sabha), it is proposed to introduce a Bill for

the amendments of Code of Civil Procedure, 1908 keeping in view, among others, that every effort should be made to expedite the disposal of civil suits and proceedings so that justice may not be delayed".

9. Note on Clause 12 of the Bill which pertains to amendment to Section 115 of the Code reads as under:-

"Clause 12.--Section 115 of the Code provides for revision by the High Court of an order or decision of any Court subordinate to such High Court. The Malimath Committee noticed that often the records of the lower Courts are sent to High Court in the revisional proceedings. It is imperative that records of proceedings pending in the subordinate Court should not be sent unless High Court so desires and revision should not operate as stay of proceedings before the Trial Court. The Committee while agreeing in principle that scope of interference against interlocutory orders should be restricted, felt that object can be achieved more effectively without demanding the High Court of the power of revision. Clause 12 seeks to achieve the above object by suitable amendments to Section 115".

10. In view of the amendment made in Section 115 of the Code, which has become operative from 1-7-2002, the revisional jurisdiction of the High Court has now been materially restricted. The effect of the amendment is that even if the order sought to be impugned suffers from jurisdictional error, it cannot be interfered with u/s 115 of the Code unless it can be shown and found that if the order impugned would have been made in favour of the party applying for revision, it would have finally disposed off the suit or other proceedings. The words "other proceedings" used in the proviso has to be understood as speaking about proceedings divorced of the suit.

11. The suit for the purpose of the Code could only mean process instituted by presentation of a plaint to the Court or such other officer as has been appointed in this behalf as provided u/s 26 read with Order 4 of the Code.

12. Coming to the facts of the present case, even if the order impugned herein would have been passed by rejecting amendment petition filed by the plaintiff that could not have finally disposed off the suit in question. Therefore, in view of the inhibition now put on the revisional jurisdiction of this Court u/s 115 of the CPC, I am prohibited from entering into the correctness, apart from advisability of doing so even otherwise with an intend to interfere with such orders.

13. It has been argued by the learned Counsel appearing for the petitioner that since revision petition was filed prior to enforcement of 1999 Amendment to the CPC, the amended provisions cannot have any application to the revision petitions like the present one. This submission also cannot be accepted for the simple reason that Clause (i) of Sub-section (2) of Section 32 of the Amendment Act is very specific in its intendment, according to which, the amended provisions will not apply only to revision petitions which have already been disposed off. This by necessary implication, mean that the amended provisions touching upon the jurisdiction of this Court will have its full application to all such revision

petitions which are pending before this Court irrespective of its stage.

14. I take this opportunity to remind all the subordinate Courts about the material declaration made in Sub-section (3) of Section 115 of the Code which statutorily clarifies that from 1-7-2002 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. This clearly means that mere stand taken by a party or his Counsel that certain order passed in the suit is likely to be assailed before High Court u/s 115 or that any revision petition has already been preferred by itself cannot be a ground for staying proceedings in the suit unless it is shown to the satisfaction of the Court that High Court has by a judicial order stayed further proceedings in the suit. In view of this unambiguous legislative declaration made by the Parliament, any rule made, order passed or instruction issued which is not in conformity with the said declaration has to be held as inoperative and inconsequential.

15. In view of the law as noticed above the present civil revision petition is dismissed.