

(2004) 04 GUJ CK 0025

In the Gujarat High Court

Case No : Civil Revision Application No. 1321 of 1997

Mahendrakumar Ramanlal Thakker prop. Laxmi Aluminium
Ind.

APPELLANT

Vs

Vanechand Morarji Desai - Heir of decd. Dhankuverben
Vanechand

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 04 GUJ CK 0025

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Suresh M. Shah and Mehul S. Shah and 2, for the Appellant;
Dharmesh V. Shah, for the Respondent

Judgement

P.B. Majmudar, J.—The petitioners herein are the original defendants of H.R.P. Civil Suit No.156/1989. The said suit is filed by the respondent herein. In the aforesaid suit, the original plaintiff-respondent herein, gave an application Exh.40 for amending the plaint by adding additional ground for eviction. The trial Court allowed the said application by the impugned order. The said order is challenged in this revision, by which amendment is granted.

2. This revision was admitted by this Court on 7th April 1998, which is placed for final hearing before this Court today. It is required to be noted that in view of the amendment in Section 115 of C.P.C., the order in question is not revisable as it would not terminate the proceedings finally. Realising this difficulty, Mr. Shah learned advocate for the petitioners submitted that he may be allowed to convert this Civil Revision Application into a petition under Article 227 of the Constitution of India. Initially, this Court was of the opinion that in view of the decision of a two-Judge Bench of the Apex Court in the case of Vishesh Kumar Vs. Shanti Prasad, a revision cannot be allowed to be converted into a writ petition. Today, Mr. Shah has placed on record copy of a decision of a three-Judge Bench of the

Apex Court rendered in the case of Municipal Corporation of Delhi Vs. R.P. Khaitan and Another, reported in 79 (1999) DLT 555 (SC), wherein while examining a case of converting a revision u/s 115 of C.P.C. into a petition under Article 227 of the Constitution of India, it has been observed by the Apex Court in para 4 as under :

"It is true that the extraordinary remedies provided under Articles 226 and 227 of the Constitution are dependent upon the High Court willing to interfere in a matter for which a large measure of discretion rests with it. Its power is so wide so as to envelop not only all aspects of the matter but orders can be passed of such nature as the High Court thinks fit. The jurisdiction as such is not curtailed to meet questions of parameters. On the other hand, the regular remedy u/s 115, CPC hedged by the language of the provision. Only errors of jurisdiction and material irregularities in the exercise of jurisdiction bring about a cause within the ambit of that provision. All the same it is worthy of notice that the Forum for the aforementioned three remedies ordinary as well as extraordinary is with the High Court itself. We see no reason then as to why the frame of the cause be determinative. It is for the litigant to choose the remedy and it is for the High Court to grant or deny relief thereon having regard to the facts and circumstances of each case. We may, however, add that the existence of an alternative remedy can by itself be a ground for the High Court refusing to exercise jurisdiction but it is not as if jurisdiction of the High Court is ousted by such existence. The High Court's dependence on Vishesh Kumar Vs. Shanti Prasad, in refusing to convert a petition u/s 115, CPC to be one under Article 227 of the Constitution may have been justified on the facts of that case, but the same cannot be treated as a precedent to oust jurisdiction of the High Court vested in it under the law. The High Court certainly is entitled to convert any proceeding instituted before it in one manner to be that of another provided a proper cause has been made out and in the interest of justice."

3. Relying upon the said judgement, it is submitted by Mr. Shah, that the Apex Court has now said that Vishesh Kumar Vs. Shanti Prasad, cannot be treated as a precedent. He submitted that since both the proceedings i.e. a revision u/s 115 of C.P.C. and a writ petition under Article 227 of the Constitution of India are before the same High Court, in view of the said judgement now this revision can be permitted to be converted into a writ petition under Article 227 of the Constitution of India.

4. In my view, in view of the aforesaid Larger Bench judgement of the Apex Court in 79 (1999) DLT 555 (supra) and considering the fact that both the proceedings are before the same High Court and considering the fact that this revision, which is already admitted by this Court, is not maintainable in view of the amendment in C.P.C., it would be just and proper to allow the petitioner to convert this revision application into a petition under Article 227 of the Constitution of India. Accordingly, permission to convert this revision into a writ petition is granted. The petitioner may supply copy of memo of Special Civil

Application within a period of two weeks from today by affixing appropriate deficit court fee stamp. Thereafter, the office may place that Special Civil Application before appropriate Court taking such matters. Order accordingly.