
(2004) 02 GAU CK 0001
In the Gauhati High Court
Case No : Civil Revision No. 381 of 1999

Makhan Chandra Deb

APPELLANT

Vs

Puran Baraik and Others

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2004) 3 GLR 630 : (2004) 2 GLT 198

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : T.C. Khetri and P. Mahanta, for the Appellant; None, for the Respondent

Judgement

I.A. Ansari, J.—This revision has arisen out of the order, dated 3.8.1999, passed by the Civil Judge (Junior Division), No. 2, Sonitpur, Tezpur, in Title Suit No. 73/1996, whereby the learned Court below rejected the plaintiff- petitioner's prayer for allowing him to prove the documents related to Miscellaneous case No. 292/1989, which was a proceeding u/s 145 of the Criminal Procedure Code, on the ground that the plaintiff- petitioner was not competent to prove the documents, in question, lying in the record of the said proceeding inasmuch as it is only an official witness, who can prove a record and/or the contents of a document lying in such a record. Feeling aggrieved, the plaintiff-petitioner has, now, impugned the order, dated 3.8.1999, aforementioned in this revision.

2. Heard Mr. TC Khetri, learned counsel for the petitioner. None has appeared for the opposite party.

3. Assailing the impugned order, Mr. Khetri contends that by not allowing the plaintiff-petitioner's prayer to prove the contents of the documents, which the plaintiff was competent to prove, the learned Court below has effectively closed the case of the petitioner inasmuch as the petitioner has been denied his right to adduce material pieces of evidence to prove the plaintiff-petitioner's case and, hence, the impugned order needs to be interfered with in revision.

4. In view of the fact that though the impugned order denies the plaintiff-petitioner the opportunity to adduce his own evidence to prove the documents, in question, and/or the contents thereof, the fact remains that the impugned order will not, even if interfered with in this revision, end the suit or the proceeding. No order passed by a trial Court permitting or refusing to permit to bring into the record of a suit or proceeding a piece of evidence, oral or documentary, and/or permitting or refusing to permit a witness to be called or examined as a witness can be revised u/s 115 of the CPC (Amendment) Act, 2002, (hereinafter referred to as the "amended Code"), unless such permission or refusal would have had, if allowed, the effect of determining the Us or end the suit or the proceeding. This position of law becomes clear from the case of Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, wherein the Apex Court, on considering the effect of the recent amendments to the amended Code, has observed as follows :

"A plain reading of Section 115 as it stands makes it clear that the stress in on the question whether the order in favour of the party apply for revision would have given finality to suit or other proceeding. If the answer is "yes" then the revision is maintainable. But on the contrary, if the answer is "no" then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision u/s 115." (Emphasis is added)

5. In the case at hand, even if the impugned order is set aside and/or the plaintiff-petitioner, is allowed to prove the documents, in question, and / of the contents thereof, it will not bring to an end the suit or the proceeding. Viewed from this angle, it is clear that the impugned order is not a kind of order, which can be revised by invoking the powers u/s 115 of the amended Code.

6. It has been further submitted by Mr. Khetri, learned counsel for the plaintiff-petitioner that since the suit was instituted before coming into force of the amended Code, the provisions of the amended Code would not apply to such cases. It may be pointed out that this aspect of the matter has been elaborately dealt with in Shivshakti Co-Op Housing Society (supra) and the Apex Court has laid down therein, in no uncertain words, that pending proceedings initiated under the Old CPC will also be governed by the provisions of the amended Code. Reference may be made to the following observations of the Apex Court in Shivshakti Co-Op Housing Society (supra).

There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(I) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly, absent in Section 32(3)I). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in. the manner prescribed. If by,a statutory change the mode of procedure is altered,

the. parties are to proceed according, to the altered mode, without exception, unless there is a different stipulation.

Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision u/s 115 of the Code. In *Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others*, it was observed that if a provision of statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, there is no scope for granting it afterwards (Emphasis is supplied) [see also *Karbi Karmakar v. Shibani Karmakar*, reported in 2003 (1)GLT 445.

7. Since Clause (b) of the proviso to Sub-section (1) of Section 115 of the Old Code stands omitted and there is nothing in Section 115 or in any other provisions of the amended Code to show that the pending proceedings are saved and Clause (b) would continue to apply to, the proceedings pending on the date, when the amended Code came into force, the inevitable conclusion would be that pending proceedings would not be saved and if relief has not already been granted under the Old Code, the same, if not saved under the amended Code, would not be granted.

8. Considered thus, it is clear that though the suit, in question, was instituted before coming into force of the amended Code, further proceedings of the suit would be governed by the provisions of the amended Code and in a case, such as the present one, where the order, sought to be revised, is an order, which, even if allowed, could not have ended the suit or the proceeding, such an order cannot be treated revisable u/s 115.

9. In view of the above, Mr. Khetri, learned counsel for the petitioner, has submitted that the plaintiff-petitioner will, now, make an application calling for an official from the office of the District Magistrate, Sonitpur, to prove the record of Misc. Case No. 292/1989 aforementioned, but so far as the contents of the plaintiff-petitioner's application lying in the record of Misc. Case No. 292/1989 is concerned, the same has to be proved by a person, who is conversant with the handwriting and/or signature of the person, who had written and signed the said application, and since it is the plaintiff-petitioner, who had signed the said application, it is the plaintiff-petitioner, who is the competent witness to prove the application, but the learned trial Court has unjustly refused to allow the plaintiff-petitioner to prove the application and/or the documents, in question.

10. In view of the fact that this revision, for the reasons pointed out hereinabove, is not maintainable, the same is disposed of as not maintainable making it, however, clear that if the plaintiff-petitioner, now, make any application for summoning of any witness/witnesses from the office of the District Magistrate, Sonitpur, to prove the records/ documents, in question, the learned trial Court shall dispose of the same in accordance with law. It is also

made clear that in case the plaintiff-petitioner renews his prayer to prove the contents of any paper/ document contained in the records of Misc Case No. 292/1989 aforementioned, the learned trial Court shall consider such a prayer and dispose of the same in accordance with law keeping in view, however, the position of law that the contents of the document(s) can be proved not necessarily by an official witness, but also by a witness, who is conversant with the contents of the documents, and/or the person, who has written the document(s) and/or the person, who has signed the document(s).

11. This revision is disposed of in terms of the above directions. There shall be no order as to costs.

12. Send back the LCR.