
(1995) 05 CAL CK 0021
In the Calcutta High Court
Case No : C.O. No. 2831 of 1991

Panchanan Karmakar and Others	Vs	APPELLANT
Anandamoy Karmakar and Others		RESPONDENT

Date of Decision : 19-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115A

Citation : (1995) 2 CALLT 121 : 99 CWN 1059

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : Bidyut Kumar Banerjee and Pijush Kanti Khara, for the Appellant; Puspendu Bikash Sahu and Sudhakar Biswas for Opposite Party Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Rabin Bhattacharyya, J.—This Civil revision is directed against Order, No. 13 dated 29.5.91 passed by the learned Additional District Judge, Midnapore in Civil Revision No. 58 of 1990. The revision preferred before the learned Court below erupted from an order passed by the learned Munsiff 3rd Court Midnapore in Title Suit No. 57 of 1990 where the learned Munsiff by his Order No. 39 dated 31.5.90 allowed a petition for local investigation of the suit property on the strength of an application preferred by the defendants or the opposite parties which has now become the all sore in the lis.

2. The learned Court of revision of first instance in exercise of his power u/s 115A of the CPC of 1908 struck down the order of the learned Munsiff when this revision before this Court challenging the propriety and legality of the order impugned.

3. Without entering into unnecessary details, the matter can be disposed of only on the legal premises.

4. In revision, factual determination of the case is impermissible and only in the

rarest of rare cases, the fact can be brought into play provided the application of mind of the Court is not adhered to and grave error and illegality committed. In the above perspective, Court of revision may invoke its jurisdiction that the order, if allowed to stand, would occasion grave justice.

5. In the background of the established principal of law, I now advert to examine the tenability of the revision before this Court.

6. It is worthy to note that Section 115 has suffered a local amendment where incorporation of Section 115A in the CPC by virtue of State Amendment has conferred power on the District Court to entertain revisional application which may be exercised by the High Court u/s 115. Thus, by introduction of 115A, a co-ordinate jurisdiction is created by the State Amendment clothing the District Court to exercise identical power in revision which can be exercised by the High Court within the realm of Section 115 C.P.C. It is undisputed that a revision had been preferred before the District Court at Midnapore where the learned Court of revision rightly or wrongly passed an order which by itself does not pave any ground for the aggrieved to knock on the door of the High Court to examine the legality or otherwise of the order passed by the learned Court below.

7. It is manifest from Section 115A that where any proceeding for revision is commenced before the District Court, the decision of the District Court on such proceeding shall be final and no further proceeding by way of revision shall be entertained by the High Court or any other Court. If any application for revision has been made by any party either to the High Court u/s 115 or to the District Court under this section, no further application by the same party shall be entertained by the other of them.

8. The emphasis is on the word "Final" which is the controlling or Governing factor inhibiting initiation of further revision before the High Court once such right is available of by a party and disposed of by a Court of Coordinate jurisdiction.

9. A controversy has been raised that the High Court is still possessed of power to adjudicate upon the dispute as the order complained of according to the learned counsel for the revisionist, has no root in law.

10. Thus in the vertex of controversy, a thin line of distinction is sought to have been made immediately which comes up for the decision of Court about the meaning and concept of the terms "Appeal", "Interlocutory" and "final". It has been debated at the bar that the High Court is diverted of its power to entertain a revision once disposed of by a Court of Co-ordinate Jurisdiction.

11. To answer the respective contentions, when I glance at the word "Final", a legitimate inference can be made that if an order is not a final order, it verges on interlocutory order. It is an axiomatic truth, since blessed by a catena of judicial decisions, that an interlocutory order merely decides some points or matter essential to the progress of the suit or collateral to the issues sought, but is not a

final decision or judgment on the matter in issue. M.N. Dodamani and Others Vs. U.S.D. Walikar (Dead) by Lrs and Others,

12. To elaborate the matter for further and better appreciation the orders or order passed in between the initiation of suit and its termination by a Court of law they come within the fold of interlocutory orders or interim orders. The finality of the litigation or the disposal of the lis to its logical end arises only on conclusion of the suit which included amongst other the, appeal as the appeal is the rehearing of the suit and vice versa. So in ordinary sense of the term an interlocutory order is one which only decide a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial, but which does not, however, conclude the trial at all.

13. To embark on an enquiry, it is the obligation of the Court to find as to whether the order passed decides in one way which may terminate the proceedings, but if it is decided in another way the proceedings continue to survive. A final order finally disposes of the rights of the parties.

14. We may draw our inspiration further from Black's Law Dictionary 5th Edition which lays down in its body the meaning of the word final. According to him, it means "last", "Conclusive", "Decisive", "Definitive", "Terminated", "Completed". In its; use in reference to legal actions, this word is generally contrasted with "interlocutory.

15. Therefore, in the background of the above, there could be no shred of doubt that the introduction of Section 115A in the C.P.C by the State Amendment is an insurmountable barrier for an aggrieved to explore relief once baked by the provisions of the Section 115A.

16. In that view of the matter, the second revision on the identical facts stand as a bar which has resulted in finality.

17. I am also fortified by a decision of our High Court in Paltu Dutta v. S. M. Nivedita Roy AIR 1991 Cal 262 where the Court held that a party once choosing the revisional jurisdiction of the District Court or the High Court cannot again prefer a revision in either of the two courts. Section 115A(4) clearly operates as a bar to such recourse.

18. The petitioner revisionist has again intransigently argued with much vehemence that if Section 115A cannot be called in aid by a party aggrieved by an order of the first Court of revision, Article 227 of the Constitution could be invoked to fuel the relief. But I am not unmindful about the scope and object of Article 227 of the Constitution. Article 227 cannot be interpreted as a touchstone for relief to a party, if the existing provisions in the code could not be availed of. In P. Dutta (supra) this point has been sufficiently answered and in the background of the ratio decidendi laid down, I refrain from taking a contrary view as there is no such scope. The attempt of the petitioner to secure relief through the back door with the aid of Article 227 of the Constitution is to catch the straw

before drowning. Therefore, in all fitness of things and in consideration of law laid down by a host of judicial decisions.

19. I cannot accept the contention of the revisionist and reject the same upholding the contentions of the opposite parties.

20. In the result, revisional application fails.