
(2003) 06 AP CK 0039
In the Andhra Pradesh High Court
Case No : CRP No. 2543 of 2003

Puvvada Srinivas and Another	Vs	APPELLANT
P. Ch. Satyanarayana Murthy and Others		RESPONDENT

Date of Decision : 19-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2003) 4 ALD 599 : (2004) 2 RCR(Civil) 379

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Upendra, for E.V. Bhagiratha Rao, for the Appellant; Balaji for G. Venkateswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard. Sri C. Upendra, the learned Counsel representing the petitioners and Sri M. Balaji, the learned Counsel representing the respondents.

2. The Civil Revision Petition is filed as against an order made in I.A.(G.R) No. 3642/2003 in O.S.No. 283/91 on the file of Principal Junior Civil Judge, Vizianagaram, dated 16-4-2003.

3. The Revision Petitioners herein filed I.A.(GR) No. 3642/2003 in O.S.No. 283/91 on the file of Principal Junior Civil Judge, Vizianagaram u/s 151 of the Code of Civil Procedure, hereinafter referred to as "Code" in short to expunge the remarks and the evidence recorded on 28-6-2002 in the evidence of DW-1 in O.S.No. 283/91 on the file of Principal Junior Civil Judge, Vizianagaram. The learned Principal Junior Civil Judge, Vizianagaram by the order dated 16-4-2003 had rejected the said application and aggrieved by the same, the present Civil Revision Petition is preferred by the Revision petitioners. The remarks recorded by the learned Principal Junior Civil Judge, Vizianagaram as against the petitioners and their Advocate in relation to the non-production of the order of stay may amount to a stigma and in view of the same, the petitioners moved the

application aforesaid which was rejected. A preliminary objection was raised relating to the maintainability of the Civil Revision Petition u/s 115 of the Code. Sri Balaji, the learned Counsel representing the respondents had placed strong reliance on Shiv Shakti Co-op.Housing Society, Nagpur v. Swaraj Developers and Ors. 2003 (1) DT (SC) 392, and had contended that the conflict of opinion expressed by different High Courts relating to the maintainability of the Civil Revision Petition as against an order of this nature had been settled by the Apex Court in the aforesaid decision and hence on this short ground, the Civil Revision Petition is liable to be dismissed as not maintainable.

4. Sri C. Upendra, the learned Counsel representing the petitioners had submitted that the remarks made are adverse remarks and in view of the seriousness involved in the matter and also in view of the observations made by the Apex Court in the decision referred in Shiva Shankti Co-op. Housing Society, Nagpur (supra) at paragraphs 35 and 36, the petitioners may be permitted either to convert this Civil Revision Petition into one under Article 227 of the Constitution of India or at least be given liberty to move appropriate proceeding under Article 227 of the Constitution of India.

5. Heard both the Counsel.

6. In the light of the preliminary objection raised relating to the maintainability of the Civil Revision Petition, the other details need not be gone into for the disposal of the present Civil Revision Petition. Section 115 of the Code as it stands after the amendment reads as hereunder:

(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,

(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 of 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 the issue, in the course of a suit or other proceeding."

While dealing with the question whether it is necessary at all to retain Section 115 of the Code, the Joint Committee of the Parliament observed:

"The question whether it is at all necessary to retain Section 115 was carefully considered by the Committee. The Law Commission has expressed in 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 the applications 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 orders were made in favour of the applicant, it would finally dispose of the suit or other proceeding; or

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

The Committee felt 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."

The Law Commission of India while dealing with Section 115 of the Code and Article 227 of the Constitution of India had observed:

"Experience shows that often the cause of delay in the trial of suits is the entertainment of petitions for revision against interlocutory orders which invariably result in stay of proceedings. In fact, in many cases, the object of the parties in moving the High Courts u/s 115 of the Code may be to delay the progress of the proceedings.

The question has been considered in the past more than once. We had in our questionnaire issued on the Code put a question as to whether the present powers should not be abolished or drastically curtailed.

Most of the replies to the above questions do not favour a change in the law. But having considered the matter carefully we have come to the conclusion that

provision in the Code as, to revision should be deleted. The discretion of the Court in granting adjournments, in granting amendment of the pleadings, in issuing or refusing to issue commissions, and with regard to many more miscellaneous matters, should not be open to revision u/s 115.

It is against such orders that revisions are generally filed, resulting in a stay of the proceedings and consequent delay in the disposal of cases.

We may note that serious cases of injustice can be dealt with under Article 227 of the Constitution.

Having regard to the above position, and to the fact that where injustice has resulted, adequate remedy is provided for by Article 227 of the Constitution for correcting cases of excess of jurisdiction or non-exercise of jurisdiction, or illegality in the exercise of jurisdiction, we are of the view that it is no longer necessary to retain Section 115. Article 227, we are sure, will cover every case of serious injustice; and, in that sense, that Article is wider than Section 115."

In *D. Kyathappa and Others Vs. K.L. Siddaramappa*, , it was held that on coming into force of the Amending Act 46/99 if the order complained is interlocutory in nature and that will not have the effect of disposal of suit or other proceedings, the same cannot be varied or reversed in exercise of revisional jurisdiction u/s 115 of the Code. In *N. Laxman Dev Vs. Nagarjuna Constructions Engineer and Builders and Others*, , it was held at paragraphs 10, 11 and 12 as follows :

"In my considered view the so-called restricted power under the proviso to Sub-section (1) of Section 115 after the amendment Act 46 of 1999, has to be read and understood in different contexts and connotations depending upon the facts and circumstances of each case. In other words the said restriction imposed under the proviso shall not be understood as totally taking away or drastically slashing down the revisional jurisdiction of the High Court, which may render the very Sub-section (1) of Section 115 as ineffective.

Further as per Clause (b) to proviso of, Sub-section (1) of Section 115 prior to amendment, the High Court can interfere with the interlocutory orders passed by the Courts below, under revisional jurisdiction, if they are allowed to stand, would occasion failure of justice or cause irreparable injury to the party against whom it was made.

In fact the specific contingencies where the High Court can exercise its revisional jurisdiction have been made clear under Clauses (a), (b) and (c) of Sub-section (1) of Section 115 of C.P.C. Hence in my view, Clause (b) of proviso to Sub-section (1) of Section 115 of unamended Code in fact is redundant so long as Clauses (a), (b) and (c) of Sub-section (1) of Section 115 are allowed to remain in the Code. Hence, I am also of the view that, in effect the revisional jurisdiction of the High Court u/s 115 did not undergo any perceptible material change by virtue of Amendment Act No. 46/99."

In *Sultan Ul Uloom Educational Society Vs. Mir Shahmat Ali Khan*, , it was held

that as against an order of Appellate Court granting temporary injunction, Civil Revision Petition u/s 115 of the Code as amended is not maintainable. In *Twentieth Century Fox Film Corporation and Another Vs. NRI Film Production Associates (P) Ltd.*, , while dealing with the expression "order would have finally disposed of suit or other proceedings" it was held that the words are not to be given narrow meaning and the effect of the order in question is to be considered and hence the order refusing permission to party to lead evidence has the effect of disposing of suit and the order is revisable. In *Madhavan v. Narayana Das*, AIR 2003 Kerala 103, it was held that only final orders in stricto sensu are revisable and non-final orders are not amenable to jurisdiction under the amended Section 115 of the Code. In *Debi Das (deceased) Vs. State of U.P. and Others*, , the Allahabad High Court also had arrived at a conclusion that a direction to maintain status quo by way of interim measure sought from the Revisional Court cannot be granted in view of the proviso added to Section 115 of the Code by the Amending Act 46/2002. In *Bharatkumar Agrawal, Mrs. Malli @ Madhulika Agrawal and Shri Jamnalal Bajaj Sewa Trust Vs. Anita Trust and Anita*, it was held that the High Court does have the power in a given rare case to exercise the powers under Article 227 and take up a matter for revision which is prohibited u/s 115 but that occasion is extremely rare and if and when it arises, the High Court can exercise the jurisdiction and convert a given application. In the decision referred in *Shiv Shakti Co-operative Housing Nagpur case (supra)*, the Apex Court at paragraph 32 observed:

"A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying 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 of 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. There is marked distinction in 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 clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(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".

In the said decision, the Apex Court also had observed at paragraphs 35 and 36 as follows:

"It was submitted by learned Counsel for the appellants that even if the revision applications are held to be not maintainable, there should not be a bar on challenge being made u/s 227 of the Constitution. It was submitted that an

opportunity may be granted to the appellants to avail the remedy.

If any remedy is available to a party under any statute no liberty is necessary to be granted for availing the same. If the appellants avail such remedy, the same shall be dealt with in accordance with law".

It is needless to mention that the impugned order does not give any finality to the suit or other proceeding and hence in the light of the clear language of Section 115 of the Code and also the ratio laid down by the Apex Court, I have no hesitation in holding that the Civil Revision Petition u/s 115 of the Code is not maintainable. Though an order may not answer the test of finality to suit or other proceeding laid down by the Apex Court, there are several orders, interlocutory or otherwise, which seriously affect the rights of the parties and at any stretch of imagination it cannot be said that such parties aggrieved of such orders should be rendered remediless. It is no doubt true that the limitations and parameters of exercise of power u/s 115 of the Code and Article 227 of the Constitution of India stands slightly on a different footing. But however, in the light of the changed situation, the aggrieved parties, as against such orders which are not at present amenable to Section 115 of the Code, can definitely maintain the proceedings under Article 227 of the Constitution of India, no doubt depending upon the facts and circumstances of each case. In the light of the same, I have no hesitation in holding that the present Civil Revision Petition filed u/s 115 of the Code is not maintainable and accordingly the same is dismissed.

7. Office is directed to return the impugned order to petitioners so as to enable them to move appropriate proceeding under Article 227 of the Constitution of India if they are so advised in this regard. Except giving this liberty, no other relief can be granted to the Revision petitioners. Accordingly, the Civil Revision Petition is dismissed, subject to the above observation, as not maintainable. No order as to costs.