

(2006) 06 GAU CK 0016

In the Gauhati High Court

Case No : Civil Revision Petition No. 76 of 2003

Salam Udoi Singh

APPELLANT

Vs

R.K. Khedasana Singh and Another

RESPONDENT

Date of Decision : 07-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, 107, 107(2), 115, 115(1)

Citation : (2006) 2 GLT 850

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : T. Rajendro, for the Appellant; N. Kotiswar, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Mr. T. Rajendro, learned Counsel for the Petitioner/Appellant and also heard Mr. N. Kotiswar, learned Counsel for the opposite party/Respondents.

2. The present Civil Revision Petition had been filed u/s 115 against the order dated 25.04.2003 passed in Judicial Misc. Case No. 43 of 2003 in Civil Misc. Appeal No. 14 of 1998 (Shri Salam Udoi Singh v. R.K. Nipamcha Singh and Anr.).

3. To amend the memo of appeal an application namely, Judicial Misc. Case No. 43 of 2002 was moved by the Petitioner/Appellant before Learned District Judge with prayer for allowing to amend memo of appeal, in order to bring certain facts which undisputedly have arisen during pendency of the appeal. The said Appeal No. 14 of 1998 was filed against the order dated 13.7.98 passed by the Trial Court, in adjudication of execution of interim injunction proceedings passed in the Original Suit No. 26 of 1992.

4. After hearing the learned Counsel for the parties, learned District Judge by an order dated 25.04.2003 passed in Judicial Misc. Case No. 43 of 2003 has observed that:

This appeal is only regarding the grant of an interim injunction and, as such, this Court is supposed to examine the legality or otherwise of the impugned interim injunction order on the basis of the pleadings of the parties made at the time of passing it. The alleged subsequent developments/facts are not necessary for the just decision of the appeal.

There is no reasonable basis for thinking that unless the proposed amendment is allowed, any legally protected interest of the Petitioner/Appellant will be lost. If he (the Petitioner/Appellant) considers that the said interim injunction order is required to be discharged, varied or set aside by a change in circumstances arising out of subsequent developments/facts, he is to invoke the jurisdiction of the trial Court under Order 39 Rule 4 Code of Civil Procedure.

Since the proposed amendment is not necessary for the just decision of the pending appeal, the prayer for amendments is thereby rejected. No order as to costs.

5. Learned Counsel for the Petitioner/Appellant invited attention of this Court to the provisions of Section 107 of Code of Civil Procedure. For convenience Section 107 is produced as below:

Section 107: Powers of Appellate Court:

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

- (a) to determine a case finally;
- (b) to remand a case;
- (c) to frame issues and refer them for trial;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

According to learned Counsel for the Petitioner/Appellant, Learned District Judge apart from exercising appellate power u/s 107 is not restrained to perform his duties and powers conferred and imposed under CPC as Court of original jurisdiction in respect of suits. According to the Petitioner/Appellant, in view of the provisions of Section 107(2), the learned District Judge could have allowed the documents placed before him even if presented subsequent to the filing of appeal.

6. On the other hand, according to learned Counsel Mr. N. Kotiswar, for the opposite party, this Court in its revisional jurisdiction under CPC has to see that parameters and provisions of Section 115 of CPC is observed or not. For convenience Section 115 of CPC is produced as below:

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 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 to by the High Court.]

It is, therefore, clear that while invoking revisional jurisdiction, this Court has to analyze three aspects e.g. as to whether Learned District Judge has exercised a jurisdiction not vested in him or has failed to exercise a jurisdiction so vested in him or has acted illegally or with material irregularity in exercise of such jurisdiction.

7. According to the learned Counsel of the opposite party, if dissatisfied with an order of injunction, the Petitioner/Appellant might move appropriate application under Order 39 Rule 4 CPC for discharge or variation or setting aside the injunction order. For convenience, Order 39 Rule 4 CPC is provided as below:

4. Order for injunction may be discharged, varied or set aside:

Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

[Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it's necessary so to do in the interests of justice. Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused

undue hardship to that party.]

8. The Petitioner/Appellant instead of resorting to the remedy available under Order 39 Rule 4 of CPC for getting the injunction discharged or varied or set aside, has preferred the present revision u/s 115 of Code of Civil Procedure. The right of appeal is substantive right but no such substantive right is available in making an application u/s 115 of Code of Civil Procedure, wherein the errors which the High Court is entitled to correct are the errors of jurisdiction. The provisions of Section 115(1)(c) of CPC are attracted inasmuch as the trial Court has acted in exercise of its jurisdiction illegally and/or with material irregularity. The revisional power of the High Court is discretionary and that the Petitioner/applicant must show not only a jurisdictional error but also to show that the interest of justice called for any interference.

9. Learned District Judge has rightly not allowed the facts, materials or documents by way of an application to amend the memo of appeal subsequent to its filing. I find no illegality in the said order, therefore, the present Civil Revision Petition has no merit, therefore, it is dismissed. Dismissal of the present Revision Petition however shall not affect any way the merits of any proceeding or case being adjudicated in accordance to the law including interim injunction before the Courts. Send down the L.C.R. to the relevant Court forthwith.