
(2004) 04 AHC CK 0074
In the Allahabad High Court
Case No : Civil Revision No. 36 of 1998

State of U.P. and Another	Vs	APPELLANT
S.N. Sharma and Company and Another		RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Arbitration Act, 1940 — Section 39
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2004) 3 AWC 2466

Hon'ble Judges : K.S. Rakhra, J

Bench : Single Bench

Advocate : P.K. Bisaria and V. Pratap, S.C, for the Appellant; Anil Sharma, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rakhra, J.—This is a revision u/s 115 of C.P.C. against the judgment and the order dated 22nd October, 1997 passed by IIIrd Additional District Judge, Bijnor in an appeal u/s 39 of Arbitration Act, 1940, i.e., Civil Appeal No. 2 of 1997, thereby the judgment and decree dated 23rd November, 1996 passed by Civil Judge, (Senior Division), Bijnor in O.S. No. 42 of 1995, was reversed and the fard has been made rule of the Court.

2. Learned counsel for the opposite party raised a preliminary objection with the maintainability of the revision u/s 115, C.P.C. on the ground that the provisions of Section 115, C.P.C. as amended in their application to State of Uttar Pradesh, bar the filing of the revision against orders other than the order passed in original suits and other proceedings of similar nature. The contention of the learned counsel for the respondent is that the impugned order in this revision and the order passed in appeal by the Additional District Judge and therefore, no revision against this order. In support of his contention, learned counsel for the respondent has placed reliance on a Full Bench decision of this Court in Jupiter

Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others, , in which the provisions of Section 115, C.P.C. as amended in State of Uttar Pradesh before and after the Central Act 104 of 1976, were considered to be interpreted. It was held that the revisional jurisdiction u/s 115, C.P.C. cannot be exercised with regard to the orders passed in appeals or (sic).

3. It is significant to note that the provisions of Section 115, C.P.C. in their notification to State of Uttar Pradesh as amended from time to time read as follows :

"115. Revision.--The High Court in cases arising out of original suits or other proceedings *[of the value exceeding one lakh rupees or such higher amount not exceeding five lakh rupees as the High Court may from time to time fix, by notification published in the Official Gazette including such suits or other proceedings instituted before the date of commencement of the Uttar Pradesh Civil Laws (Amendment) Act, 1991, or as the case may be, the date of commencement of such notification], and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any Court subordinate to such High Court or District Court, as the case may be 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 or the District Court as the case may be, may make such order in the case as it thinks fit:

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court the High Court alone shall be competent to make an order under this section :

Provided further that the High Court or the District Court shall not under this section, vary or reverse any order including an order deciding an issue, made in the course of a suit or other proceedings, except where :

(i) the order, if so varied or reversed, would finally dispose of the suit or other proceedings ; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made :

*[Provided also that where a proceeding of the nature in which the District Court may call for the record and pass orders under this section was pending immediately before the relevant date of commencement referred to above, in the High Court, such Court shall proceed to dispose of the same.]

Explanation.--In this section, the expression "any case which has been decided"

includes any order deciding an issue in the course of a suit or other proceeding."

4. In reply to the argument raised by the learned counsel for the respondent, the learned counsel for the revisionist placed reliance on the cases of *L. Charan Das Vs. L. Gur Saran Das Kapur*, and *Shambhu Dayal and Others Vs. Pt. Basdeo Sahai*, , in which it was held that an order passed u/s 39 of Arbitration Act was revisable u/s 115, C.P.C. Both these cases were decided prior to the amendment in Section 115, C.P.C. were made. Therefore, they are of no help to the revisionist. Another case which has been relied upon by the learned counsel for the revisionist is the case of *Shyam Sunder Agarwal and Co. Vs. Union of India*, , in which it was held that the revision u/s 115, C.P.C. was maintainable against the order passed u/s 39 of Arbitration Act, 1940. The said case relates to the dispute arising in the State of Assam and therefore, the amended provision of Section 115, C.P.C. as applicable to U.P., were not considered in the case. Therefore, the said case is also of no help to the revisionist.

5. Learned counsel for the revisionist then requested that he may be permitted to convert this revision into a writ petition and for this, reliance was placed on the case of *Essar Constructions v. N. P. Ram Krishna Reddy* AIR (2000) SCC 94. That was a case where an objection u/s 30 of the Arbitration Act, 1940 read with Section 5 of the Limitation Act was rejected by the Court below and revision was preferred against that order u/s 115, C.P.C. The High Court allowed the revision by condoning the delay and remitted the matter to the trial court for decision on merit. The matter was taken up in the Supreme Court. It was held that the revision u/s 115, C.P.C. was not maintainable as the order passed u/s 30 of Arbitration Act read with Section 5 of the Limitation Act was an appealable order u/s 39(1)(vi) of the Arbitration Act. In that connection, the Apex Court was considering the plea as to whether the permission be granted to convert the revision into appeal. The Supreme Court rejected the request and observed that if issue had been raised, it would have been open to the High Court to convert the revision petition into appeal. The Supreme Court, however, in exercise of their special power under Article 142 of the Constitution of India, allowed the order of the High Court regarding condonation of delay to stand.

6. Learned counsel for the opposite party has however placed reliance on the case of *Vishesh Kumar Vs. Shanti Prasad*, , wherein it was specifically held that the revision petition u/s 115, C.P.C. cannot be converted into one under Article 227 of the Constitution of India. The argument before the Apex Court was that in case it was of the opinion that revision u/s 115, C.P.C. was not maintainable, the case should be remitted to the High Court for consideration it as a petition under Article 227 of the Constitution of India. The Court held "we are unable to accept the prayer. A revision petition u/s 115, C.P.C. is separate and distinct proceedings from a petition under Article 227 of the Constitution, and one cannot be identified with the other.

7. In view of the clear law laid down in *Vishesh Kumar v. Shanti Prasad* as well as *Jupiter Chit Fund (Put) Ltd.*, both the prayers of the revisionist are liable to be

rejected.

8. The revision is not maintainable and is accordingly dismissed.