
(2004) 02 GAU CK 0066
In the Gauhati High Court
Case No : C.R.P. No. 80 of 2003

Tripura State Co-op. Bank Ltd.

APPELLANT

Vs

Shambhu Paul and Another

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 10, 115, 35B

Citation : AIR 2004 Guw 157 : (2004) 1 GLT 445

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

Bench : Single Bench

Advocate : B.Das, S. Das and S. Roy, for the Appellant; D. Chakravorty, S.M. Chakraborty and A. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The order under challenge in the present revision was passed, on 4-9-2003, by the learned Civil Judge (Senior Division), No. 1, West Tripura, Agartala, in Money Suit No. 25 of 2002, refusing to call, on the prayer of the plaintiff-petitioner, the records from the Court of the Judicial Magistrate, 1st Class, Agartala, relating to GR Case No. 85 of 2001.

2. While calling for the records aforementioned, the learned Court below observed and directed as follows :

"Heard both sides and considered. It appears that a detail order was passed on the prayer of the plaintiff to call for the record from the learned CJM/JM, 1st Class, Agartala, on the prayer, on 13-3-2003 and 4-7-2003 and in that order the plaintiff was given a chance to produce the admissible evidence of documents, namely, primary evidence or giving explanation, the secondary evidence of the primary documents as per the provisions of law. But the plaintiff are insisting the same prayer before the Court for months together and dragging the case. So prayer of the plaintiff appears to be having no merit in view of the orders, dated 13-3-2003 and 4-7-2003, and accordingly stands rejected. At this stage, the

lawyer of the plaintiff submits in writing 7 days time. Time allowed."

3. I have perused the materials on record. I have also heard Mr. B. Das, learned senior counsel, appearing for the petitioner-plaintiff, and Mr. S.M. Chakraborty, learned counsel appearing for the respondents-defendants.

4. Assailing the impugned order, Mr. B. Das, learned senior counsel, has submitted that without the relevant records, it was impossible for the plaintiff-petitioner to prove his case and, in such a situation, the learned trial Court caused serious miscarriage of justice by refusing to call for the records, when the application calling for the records, aforementioned was made by the plaintiff-petitioner and, hence, the impugned order may be set aside, for, the impugned order is nothing but refusal to exercise the powers vested in the Court. Such a refusal to exercise jurisdiction can be interfered with, contends Mr. Das, u/s 151 of the CPC (hereinafter referred to as "the Code").

5. Resisting the above submissions made, on behalf of the plaintiff-petitioner, Mr. S.M. Chakraborty, learned counsel for the respondents-defendants, has submitted that under the amended provisions of Section 115 of the Code, the impugned order is not revisable inasmuch as it does not decide the lis or the proceeding and even if the impugned order is set aside, the suit or the proceeding will not terminate. It is also submitted by Mr. Chakraborty that the plaintiff-petitioner has been making repeated prayers calling for the records and the learned trial Court, for the reasons assigned, have been refusing to call for the records. Hence, even if the impugned order is set aside, the earlier orders refusing to call for the records will still hold good and it will, therefore, be a futile exercise of revisional jurisdiction if the impugned order is interfered with.

6. Repelling the submissions made on behalf of the respondents-defendants, Mr. Das has submitted that the suit was instituted before coming into force of the amended Code and, hence, the provisions of the amended Code will not apply to such proceedings.

7. While considering the merit of the rival submissions made before me, on behalf of the parties, it is of utmost importance to note that a decision on the application calling for the records is not res judicata inasmuch as it does not decide any issue in controversy between the parties. Hence, if an application calling for the records is turned down, it does not preclude the Court from calling for the records if the ends of justice so require or effective determination of controversy, which has arisen in the suit, so warrants. However, if repeated applications calling for the records are made without good or sufficient reasons, the Court will be at liberty to impose cost for wasting public time and delaying the proceeding.

8. Turning to the question as to whether the impugned order is maintainable, it may be noted that before coming into force of the CPC (Amendment) Act, 2002 (hereinafter referred to as "the amended Code"), an order, which suffered from jurisdictional error, could have been interfered with by the High Court in exercise

of its revisional jurisdiction u/s 115 if the order under challenge was likely to cause failure of justice or irreparable loss or injury to the party approaching the revisional Court, but with Clause (b) of the proviso to Section 115(1) having been deleted under the amended Code, the implication is that even if an order suffers from jurisdictional error or causes failure of justice or irreparable injury to the party approaching the Court, the order will not be interfered with by the Court in revision unless the order, which is sought to get revised, is such that had the order been made in favour of the party applying for revision, it would have terminated the suit or the proceeding. See *Karabi Karmakar v. Shibani Karmakar*, reported in 2003 (1) GLT 445 : 2003 AIHC 1469.

9. The effect of the recent amendment to the Code has been summarized by the Apex Court in *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others*,

"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 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)

10. In the case at hand, even if the impugned order is set aside and/or the records which the petitioner-plaintiff seeks to call for, is directed to be called for, it will not bring an end to 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.

11. Adverting to the submissions made, on behalf of the petitioner plaintiff, 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 *Shiv Shakti 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 Court in *Shiv Shakti Co-operative Housing Society (supra)* :--

"There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32 (2) (1) 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) (1). 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)

12. 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.

13. 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 this, where the order sought to be revised is an order, which could not have ended the suit or proceeding, such an order cannot be treated revisable u/s 115.

14. In the result and for the foregoing reasons, this revision is held as not maintainable and the same is accordingly dismissed.

15. Considering the entire facts and circumstances of the case. I leave the parties to bear their respective costs.

16. Send back the LCR to the learned Court below.