

ALLAHABAD HIGH COURT

Jupiter Chit Fund (Pvt.) Ltd.

Vs.

Dwarka Diesh,

Civil Revn. Nos. 2596 of 1977 and 326 of 1978

(Satish Chandra, C.J., Yashoda Nandan and K.C. Agrawal, JJ.)

03.05.1979

JUDGEMENT

Satish Chandra, C. J.

1. An arbitrator filed his award dated 19th Nov., 1973, in the court of the Civil Judge, Kanpur. Objections were filed thereto. They were allowed in part. The award was remitted to the arbitrator for reconsideration by an order dated 30th April, 1975. A revision under Section 115 of the Civil Procedure Code was filed against this order. The Additional District Judges, on 21st April, 1977, allowed the revision and set aside the award. Aggrieved, the applicant has filed the present revision under Section 115, Civil Procedure Code against the order dated 21st April, 1977. The valuation of the revision is Rupees 11,983/54 p. The valuation of the proceedings before the Civil Judge was the same.

2. At the hearing of the revision an objection was raised that the revision was not maintainable in the High Court. The learned single Judge referred the following two questions to a Full Bench :

- (1) Whether the present revision is maintainable in the High Court ?
- (2) Whether the phrase "case arising out of an original suit" occurring in Section 115 of the Civil Procedure Code covers orders passed in an appeal or revision ?

3. Section 115, Civil Procedure Code conferred powers of revision on the High Court alone. The State legislature amended Section 115 by the U.P. Civil Laws Amendment Act, No. 14 of 1970. By this amendment revisional jurisdiction was conferred on the District Court concurrently with the High Court with the following proviso -

"Provided that nothing in this Section shall be construed to empower the

District Court to call for the record of any case arising out of an original suit of the value of twenty thousand rupees or above."

4. The concurrent jurisdiction of the District Court was excluded in respect of cases arising out of original suits of the value of twenty thousand rupees or above. In such cases the revisional jurisdiction lay exclusively with the High Court. The Statement of Objects and Reasons appended to the 1970 Amendment Act stated that this was to help in reducing the pressure of work on the High Court.

5. This, however, was not found satisfactory. Section 115, Civil Procedure Code was again amended by the U.P. Civil Laws Amendment Act of 1972. The Statement of Objects and Reasons appended to the Act of 1972 stated :

"It is now proposed that in cases of a value below Rs. 20,000/- this power may be exercised by District Judges alone and in cases of higher valuation this power may be exercised by the High Court. This will eliminate one of the causes of delay in the disposal of suits."

6. Section :15, as amended in 1972, was –

"The High Court in cases arising out of original suits of the value of twenty thousand rupees and above, and the District Court in any other case 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 and with material irregularity,

the High Court or the District Court may make such order in the case as it thinks fit."

7. By this amendment the revisional jurisdiction was bifurcated. Part of it remained with the High Court, and another part was given to the District Court. The two were mutually exclusive. The revisional power was contemplated to be exercised by the High Court or the District Court in separate fields. There is no indication that the High

Court was intended to exercise the revisional jurisdiction against orders passed in exercise of the revisional jurisdiction by the District Court. In other words, Section 115 was not amended to confer a revisional jurisdiction against an order passed under Section 115 itself.

8. But on this point doubts arose, and the question whether an order passed by the District Judge in a revision was amenable to the revisional jurisdiction under Section 115, Civil Procedure Code was referred to a Full Bench in *Har Prasad Singh v. Ram Swarup*, 1973 All LJ 343 : (AIR 1973 Allahabad 390). The second question referred to the Full Bench was as follows (at p. 391 of AIR) :

"(2) in case the order sought to be revised is passed by a District Judge or any officer exercising the powers of District Judge in an appeal or revision arising out of an original suit of the value of less than twenty thousand rupees, where will a revision lie, if at all ?"

The Full Bench gave its opinion as follows (at p. 396 of AIR) :

"Coming now to the second question, there is little room for doubt on the plain and clear language of Section 115 of the Code, as now amended, that no revision shall lie at all, either in the High Court or in the District Court."

9. The third question referred to the Full Bench was :

"(3) Does no revision lie from proceedings other than original suits ?"

10. This depended upon the interpretation of the words "in any other case" occurring in the Section. The Full Bench held that the words "in any other case" in the context only referred to and had been used in contradistinction to the preceding words "in cases arising out of original suits". Therefore, it can be reasonably held, without doing any violence to the language of the amended Section 115 of the Code, that the words "in any other case" refer to and mean a case arising out of an original suit of which the valuation is below twenty thousand rupees. In other words, the phrase "in any other case" did not refer to inter alia orders passed in appeals or revisions.

11. It will be seen that the Full Bench interpreted the phrase "cases arising out of

original suits" as also the phrase "in any other case" and held that they do not include cases arising out of decision of an appeal or revision. The decision of an appeal or revision by a District Court was outside the purview of the revisional powers conferred by Section 115, C.P.C.

12. This Full Bench decision did not resolve the controversy whether the amendment was retrospective and operated on cases arising out of suits instituted before Sept. 20, 1972, when the Amending Act of 1972 came in force. This question was referred to a Full Bench of five Judges.

13. Another difficulty which remained unresolved was whether orders passed by the District Court itself in cases arising out of original suits of the value of less than Rs. 20,000/- were immune from the revisional jurisdiction of the High Court, because the latter was confined to cases of valuation of Rs. 20,000/- and above. The High Court had no jurisdiction in respect of cases of lesser valuation.

14. The legislature again intervened to amend Section 115 by U.P. Civil Laws Amendment Act, No. 19 of 1973. This was a President's Act. The same was repealed and replaced by U.P. Act No. 30 of 1974. Section 115 as so amended expressly provided that the revisional jurisdiction of the High Court or the District Court extended to suits instituted before the 20th day of September, 1972, also. In other respects Section 115 as it stood after the 1972 amendment was retained except that a proviso was added. The proviso stated –

"Provided that in respect of cases decided before the 20th day of Sept., 1972, and also all cases arising out of original suits of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this Section."

The proviso dealt with two matters. It conferred exclusive revisional jurisdiction on the High Court in respect of cases decided before the 20th Sept., 1972. In the next place, it provided that the High Court alone shall be competent to make an order under this Section in respect of all cases arising out of original suits of any valuation decided by the District Court. Now orders passed by the District Courts in cases arising out of original suits were not immune but became amenable to the revisional jurisdiction of

the High Court. The Statement of Objects and Reasons appended to this Amending Act stated that the proposed amendments were intended to clarify the legal position. Obviously it was not intended to bring about any fundamental change in the legal position. After the 1973 Amendment difference of opinion arose on the question whether the proviso included orders passed in appeals or revisions by the District Courts. The matter was referred to a third Judge. The opinion of the third Judge was that an order passed in an appeal or revision is a case arising out of an original suit and a revision would be maintainable against an order passed by the District Court disposing of an appeal or a revision : vide *Phool Wati v. Gur Sahai*, AIR 1975 Allahabad 262.

15. The learned Judge noted the Full Bench decision in *Har Prasad Singh's case* (AIR 1973 Allahabad 390). It was observed (at p. 267) :-

"The Full Bench of this Court had expressed the opinion that no revision lay against the order of the District Judge passed in exercise of his appellate or revisional jurisdiction, but after the 1973 Amendment such an issue has been raised".

16. The Full Bench decision in *Har Prasad Singh* (supra) was explicit and clear that the phrase "cases arising out of original suits" does not include decisions of appeals or revisions. The proviso added in 1973 used the same phrase, namely, "cases arising out of original suits". But apparently the learned Judge felt that the Full Bench decision was not binding because the proviso was not there when the Full Bench gave its opinion. The matter was examined de novo.

17. We are, however, unable to share this view. The phrase "cases arising out of original suits" came in the Section when it was amended in 1970. The same phrase continued in the Section after its amendment in 1972 as well as (in) 1973. The 1972 amendment used this phrase in relation to the High Court. In respect of the jurisdiction conferred on the District Court the phrase used was "in any other case". Both these phrases were (taken) up for consideration before the Full Bench. For both the Full Bench ruled that they did not include a case arising out of the decision on an appeal or revision.

18. The 1973 amendment which added the proviso continued to use the same phrase,

namely, "cases arising out of original suits". As is clear from the Statement of Objects and Reasons, the 1973 amendment was made in order to clarify the legal position, not to change it. There was hence no justification for giving a different interpretation to the phrase "cases arising out of original suits" occurring in the proviso than the one given by the Full Bench to the same phrase occurring in the main Section.

19. Previously Section 25 of the Provincial Small Cause Courts Act conferred revisional jurisdiction on the High Courts. Subsequently by Amending Act No. 17 of 1957 this revisional jurisdiction was taken away from the High Court and conferred on the District Court. The decision of the District Court of a revision under Section 25 of the Provincial Small Cause Courts Act would, in view of the Full Bench decision in Har Prasad Singh's case (AIR 1973 Allahabad 390) be equally immune from the revisional jurisdiction of the High Court under Section 115, C.P.C.

20. Section 115, Civil Procedure Code conferred supervisory jurisdiction on the High Courts. The State amendments bifurcated the supervisory jurisdiction. For some category of cases the High Court, and in other cases the District Court were given the supervisory power. The fields were mutually exclusive. Neither was subject to the other. The High Court could not entrench upon the field reserved for the District Court. The High Court cannot examine a case reserved for the District Court, because by doing so it would not only entrench upon, but nullify the supervisory jurisdiction of the District Court. Granting power to High Court over District Court's revisional decision, would enable the High Court to do indirectly what it could not do at all, namely, examine the order of the trial court. It is thus apparent that no revision lies to the High Court against orders passed by the District Court in revision.

21. It was suggested that an appeal or a revision is a case which arises out of the original suit, and, therefore, a revision would lie under Section 115, Civil Procedure Code to the High Court.

22. An appeal or a revision is for some purposes treated as a continuation of a suit. The appeal or the revision is the case which arises out of the suit. But when the appeal or the revision is decided, such decision creates a different or a fresh case which arises out of the appeal or the revision. It has an identity and existence different and apart from the case which arose out of the suit.

23. It is settled law that a judicial order passed by the trial court merges in the order passed by the appellate or revisional court *Shankar Ramchandra v. Krishnaji Dattatraya* (AIR 1970 Supreme Court 1). How can it be said that an appellate or revisional decision in which the decision of the trial court has merged, is still a case arising out of the original suit. After merger, that case, i.e. the decision arising out of the original suit vanishes. The decision of the appeal or revision brings into existence a case which can properly be said to be arising out of the appeal or revision. The decision of an appeal or revision is hence not amenable to the revisional jurisdiction under Section 115 even after the amendment in 1973.

24. Section 43 of the Central Amending Act, 104 of 1976, which came into force on Feb. 1, 1977, also amended Section 115, Civil Procedure Code. Section 43 of the said Act reads as follows :-

"43. Section 115 of the Principal Act shall be renumbered as Sub-Section (1) thereof, and

(a) to Sub-Section (1) as so renumbered the following proviso shall be added, namely -

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 -

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) that order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it made."

(b) after Sub-section (1) as so renumbered, the following Sub-Section and Explanation shall be inserted, namely :-

(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.

Explanation.- In this Section, the expression 'any case which has been decided' includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

25. Section 43 opens with " Section 115 of the Principal Act shall be renumbered as

Sub-section (1) thereof" and a proviso shall be added thereto. The proviso mentions only the High Court.

26. The question is whether Section 115 of the Principal Act refers to Section 115 as originally enacted in Act 5 of 1908, or as it stood on Jan, 31, 1977, after its amendment by the State legislature. Section 2 of the Amending Act No. 104 of 1976 provides –

"2. Amendment of Section 1 - In the Civil Procedure Code, 1908 (hereinafter referred to as the principal Act), in Section 1, for Sub-section (3), the following Sub-Sections shall be substituted....."

27. This provides a clue that the principal Act refers to Act No. 5 of 1908. Sub-section (1) of Section 97 of the Amending Act, which is the repealing and saving provision, provides –

"(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed."

Under this provision all amendments which are inconsistent with the Amending Act stand repealed. If Section 115 as it stood on 31st Jan., 1977, was inconsistent with the provisions of the Amending Act, the State amendments stand repealed. Section 115 as it stood on 31st Jan., 1977, had been amended by the State legislature of Uttar Pradesh in 1970, 1972 and 1973. The 1973 amendment conferred revisional jurisdiction on the High Court and the District Court mutually exclusively. The amendments introduced by the Central Act of 1976 only referred to the High Court. They curtailed the revisional jurisdiction of the High Court in several respects. They do not even mention the District Court. This clearly shows that Section 115 as amended by State legislature was inconsistent with the Central Act, because it conferred revisional jurisdiction on the District Courts in some cases which under the Central Act were with High Court. Because of this inconsistency the State amendments stood repealed. Sub-section (1) of Section 115 spoken of in Section 43 meant Section 115 of the original Act No. 5 of 1908 shorn of the State amendments. In other words Section 115 which was renumbered as Sub-section (1) was the one which conferred revisional jurisdiction on

the High Court alone.

28. Clause (o) of Section 97, Sub-Section (2) was a transitory provision saying –

"the amendment of Section 115 of the principal Act by Section 43 of this Act shall not apply to or affect any proceeding for revision which had been admitted, after preliminary hearing, before the commencement of the said Section 43; and every such proceeding for revision shall be disposed of as if the said Section 43 had not come into force."

29. Under this provision if a revision had been filed in the District Court and had been admitted after preliminary hearing before 1st Feb., 1977, it shall continue to be heard and disposed of by that court, provided it was validly filed in the District Court. The Amending Act, No. 104 of 1976, will not affect the pending revisions. They would continue to be governed by Section 115 as it stood before its amendment on 1st Feb., 1977. In other words, Section 115 as amended by the State Legislature in 1973 would continue to govern revisions which had been admitted after preliminary hearing on or before 31st Jan., 1977.

30. In the present cases the trial court decided the objections on 30th April, 1975. The value of the suit was below Rs. 20,000/-. So a revision lay to the District Court, and was validly filed there. The District Court, disposed of the revision on 21st April, 1977. The revision in this Court was filed on 3rd November, 1977. It was admitted after preliminary hearing and notice was directed to issue on 13th March, 1978. This revision was filed long after February 1, 1977, when the Central Act came into force. So Clause (o) of Section 97(2) will not apply. Under Section 115 as amended by Section 43 of the Central Act, revision lay to the High Court. With effect from February 1, 1977, the State amendments stood repealed. Section 115 as amended by the Central Act conferred revisional jurisdiction on the High Court in respect of cases decided by courts subordinate thereto. Since the bifurcation of the revisional jurisdiction had vanished, the revision was competent in the High Court even if it was directed against an order passed by the District Court in a revision. The material condition under Section 115, as amended in 1976 was that there should be a case decided. The disposal of the revision was obviously a case decided.

31. The decision in *Indian Oil Corporation v. Kishore Bandhu*, 1978 All LJ 176 will not apply to the present case. In that case Section 115 as amended by State Legislature

in 1973 was considered and it was held that revisional power was confined to cases arising out of original suits. Proceedings under the Arbitration Act were not proceedings in the nature of suits, and hence orders passed in those proceedings were not amenable to the revisional jurisdiction. This authority will cover cases which are not governed by Section 115 as amended by the Central Act of 1976, that is to say, revisions which had been instituted and had been admitted after preliminary hearing on or before Jan. 31, 1977. Revisions admitted after preliminary hearing on or before 1st Feb. 1977, would be governed by Section 115 as amended by the Central Act. The ruling in Indian Oil Corporation's case will not apply to them.

32. The Civil Procedure Code (Uttar Pradesh Amendment) Act, No. 31 of 1978, came into force on 1st August, 1978. Section 3 of this Act repealed and substituted Section 115, Civil Procedure Code. The Section as now enacted reads as follows :-

"115. The High Court, in cases arising out of original suits or other proceedings of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before Aug. 1, 1978 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 proceeding, except where,-

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

Explanation - In this Section, the expression 'any case which has been decided' includes any other deciding an issue in the course of a suit or other proceeding."

33. With effect from 1st April, 1978, the revisional jurisdiction was again bifurcated. The High Court was confined to cases arising out of original suits or other proceedings of the value of Rupees 20,000/- or above, including such suits or other proceedings instituted before 1st August, 1978. The jurisdiction of the District Court was in respect of any other case including a case arising out of an original suit or other proceeding instituted before such date. The legislature has continued to use the phrase "cases arising out of original suits". The interpretation placed upon this phrase by the Full Bench in Har Prasad Singh's case (AIR 1973 Allahabad 390) will apply. The revisional jurisdiction would hence not extend to cases arising out of the disposal of appeals or revisions by the District Court. The proviso is also in the same terms as the proviso added in 1973 namely, it uses the phrase "cases arising out of original suits or other proceedings." As already seen, it will not cover cases arising out of disposal of appeals or revisions.

34. The words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added in order to bring within the purview of the revisional jurisdiction orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings" have to be read ejusdem generis with the words "original suits." They will not include appeals or revisions.

35. The phrase "in any other case" used with reference to the District Court will refer to cases arising out of original suits of the value of less than Rs. 20,000/- and also cases arising out of other proceedings of an original nature of a valuation below Rs. 20,000/-

36. The present revision was of a value of less than Rs. 20,000/-. If Section 115 as amended in 1978 were to apply the revision will not be maintainable in the High Court. Section 5 of the Amending Act of 1978 laid down a transitory provision. It says –

"5. Where a proceeding of the nature in which the District Court may call for the record and pass orders under Section 115 of the said Code as substituted by this Act was pending immediately before August 1, 1978 –

- (a) in the District Court, such Court shall proceed to dispose of the same as if the provisions of this Act were in force at all material times;
- (b) in the High Court, such Court shall proceed to dispose of the same as if this Act had not come into force."

37. In relation to cases in which the District Court had jurisdiction under Section 115 as amended in 1978, the revisions, if filed in the High Court, are governed by Clause (b), and the High Court is to dispose of the same as if the Amending Act of 1978 had not come into force. The present revision was pending in the High Court from before Aug. 1, 1978. It shall continue to be disposed of as if the 1978 Act had not come into force. Before this date the Central Act of 1976 held the field. Under it only the High Court had revisional jurisdiction. The present revision was hence validly instituted in this Court, and this Court has jurisdiction to dispose it of on the merits, in accordance with Section 115, Civil Procedure Code as it stood after its amendment by the Central Act, No. 104 of 1976.

38. Our answer to the two questions referred to this Full Bench are -

Question : (1) Whether the present revision is maintainable in the High Court ?

Answer : In the affirmative.

Question : (2) Whether the phrase "case arising out of an original suit" occurring in Section 115 of the Civil Procedure Code covers orders passed in an appeal or revision ?

Answer : In the negative.

39. Let the papers be laid before the learned single Judge with this opinion and

answer.

Reference answered accordingly.