

# RAJASTHAN HIGH COURT

Mohan Lal Gupta

Vs.

Chairman, Nagar Palika, Kaithoon

S.B. Civil Revision Petition No. 1262 of 2002

(Shashi Kant Sharma, J.)

24.01.2003

## JUDGMENT

**Shashi Kant Sharma, J.**

1. Instant civil revision petition filed by Mohan Lal Gupta-plaintiff petitioner is directed against the order dated 21st August, 2002 passed by the learned Additional Civil Judge (Junior Division) No. 5, Kota whereby application of petitioner for allowing the petitioner to give secondary evidence has been dismissed.
2. Heard learned counsel for the petitioner at admission stage.
3. Now, Civil Procedure Code has been amended by the Act of 46 of 1999 and it has been implemented from 1st July, 2002 and after this amendment Section 115 of Civil Procedure Code has been changed materially and consequently, the revisional jurisdiction of the High Court has now been materially restricted. On this point, judgment of Karnataka High Court in the case of *K.R. Subbaraju v. Vasavi Trading Co. and others*; <sup>1</sup> judgment of High Court of Madhya Pradesh in the case of *Phool Singh v. Mavla @ Bhavaliya and others*, <sup>2</sup> and the judgment of High court of Allahabad in the case of *Devi Das (deceased) and etc. v. State of U.P. and others*, <sup>3</sup> are relevant.
4. High Court of Karnataka in the case of K Subbaraju (supra) held as under:

"In view of the amendment made in Section 115 of the Code by amendment Act 46 of 1999, which has become operative from 1.7.2002, the revisional jurisdiction of the High Court has now been materially restricted. The effect of the amendment is that even if the order sought to be impugned suffers from jurisdictional error, it cannot be interfered with under Section 115 unless it can

be shown and found that if the order impugned would have been made in favor of the party applying for revision, it would have finally disposed of the suit or other proceedings. The words "other proceedings" used in the proviso has to be understood as speaking about proceedings divorced of the suit."

5. High Court of Madhya Pradesh in the case of Phool Singh (supra) held as under:

"The Legislature has clearly intended to limit the jurisdiction of the High Court in exercising the powers under revision and now that can only be exercised in cases where the order, if it had been made in favor of the party applying for revision would have finally disposed of the suit or other proceedings otherwise not. Therefore, the clear meaning is that now no revision would be maintainable against any interlocutory order if it would not have the effect of finally disposing of the suit or other proceedings."

6. High Court of Allahabad in the case of Devi Das (deceased) and etc. (supra) has held as under:

"According to this proviso therefore, the order can not be varied, reversed in the exercise of powers under Section 115 Civil Procedure Code for the reason that had the order been made in favor of the revisionist it would not have finally disposed of the suits.

Accordingly, all the three revisions are dismissed with the direction to the trial Court to dispose of the application for temporary injunction expeditiously. The order, if any is hereby vacated."

7. After perusing the above mentioned judgments and Section 115 of Civil Procedure Code, it is clear that now High Court can interfere in the order of the subordinate court only if where the order it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

8. I have examined the impugned order. By impugned order, trial court has dismissed the application of petitioner plaintiff for allowing him to give secondary evidence. After examining of this order, it is clear that even if trial court would have passed that order in favor of the petitioner, the civil suit pending before the trial court could not have been disposed finally. Therefore, this court cannot interfere in the impugned order.

9. Consequently, the revision petition is dismissed.

Petition dismissed.

Cases Referred.

1. 2002(4) RCR(Civil) 603 Kar : AIR 2002 Kar 407
2. AIR 2002 MP 246
3. AIR 2003 All 14