

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRP No. 85/2008

Date of Decision: 5th May, 2010

SANJEEV KUMAR

..... Petitioner

Through: Mr. Naveen Tripathi, Adv. with
Ms. Saroj Tripathi, Adv.

versus

SWETA KUMARI

..... Respondent

Through: Mr. Pankaj Kumar, Adv.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J. (Oral)

CRP No. 85/2008 and CM APPL Nos.16026/2009 (O.6 Rule 17 CPC) and 7731/2008 (stay)

1. Parties to the petition were married according to Hindu Rites and Ceremonies on 14.06.2006 at Bokaro, Jharkhand. They separated on 27.09.2007. Consequently, Petitioner filed a petition seeking divorce under Section 13 (1) (ia) of Hindu

Marriage Act (hereinafter referred to as 'Act'). In the said petition, Respondent filed an application under Section 24 of the Act for grant of interim maintenance. The Trial Court vide impugned order dated 09.04.2008, awarded maintenance @ Rs.13,000/- per month to the Respondent from the date of filing of the application besides litigation expenses of Rs.15,000/- after considering his net salary of Rs.38,120/-.

2. Aggrieved by the said order of the Trial Court, Petitioner filed the present Revision Petition.
3. Respondent has challenged the maintainability of the Revision Petition in view of the recent amendment in Section 115 Civil Procedure Code (hereinafter referred to as 'CPC').
4. Mr. Naveen Tripathi, counsel for the Petitioner has submitted that this petition was filed in May, 2008 and while issuing notice to the Respondent, the Court stayed operation of the impugned order and directed the Petitioner to pay Rs.8,000/- per month to the Respondent. He has submitted that Justice Manmohan, heard the counsel for the parties and was of the opinion that this Court has the power to treat this petition as

CM (Main) under Article 227 of the Constitution *suo moto* without any application. He has submitted that in fact the Court had given him time to file an application to convert the present Revision Petition into CM (Main) and therefore, he filed an application under Order 6 Rule 17 CPC seeking amendment in the Revision Petition to be treated as CM (Main). To support his submissions, he has referred to following judgment:-

- (i) ***Col. Anil Kak (Retd.) v/s. Municipal Corpn., Indore & Ors., (2005) 12 SCC 734;***
- (ii) ***'Surya Dev Rai vs. Ram Chander Rai & Ors', (2003) 6 SCC 675;***
- (iii) ***'M/s. Om Rice Mill, Jaspur & Ors. vs. Banaras State Bank Ltd., Kashipur & Anr', AIR 2000 Allahabad 90;***
- (iv) ***'Jaleel Khan vs. M. Kamalamma', 2002 AIHC 880;***
- (v) ***'Smt. Saroj Devi vs. Ashok Puri Goswami', AIR 1988***

Rajasthan 84; and

(vi) ‘S. Bishan Singh vs. Murti Shivji’, AIR 1969 J&K 50.

5. Mr. Pankaj Kumar counsel for the Respondent has submitted that by way of amendment, Petitioner cannot be allowed to cure the inherent defect in filing the revision petition as revision petition is independent of the writ petition and two are of different nature. Therefore, one cannot be converted into another. He has emphasized that the revision petition is not maintainable and should be rejected. To support his submissions, he has relied upon the following judgments:-

(i) ‘Puran Ram vs. Bhaguram & Anr.’, AIR 2008 SC 1960;

(ii) ‘Sanjay Kapoor vs. Smt. Meenakshi’, 110 (2004) DLT 610;

(iii) ‘Satish Kumar Jain vs. Raj Singh Yadav’, 2009 (110) DRJ 61; and

(iv) ***'Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers & Ors.', (2003) 6 SCC 659***

6. By virtue of amendment in Section 115 of the CPC, powers of the High Court to entertain a revision petition has been curtailed. The High Court cannot 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 have finally disposed of the suit or other proceedings.
7. Thus, it is clear that a revision petition under Section 115 CPC is maintainable if the order in favour of the party applying for revision, would have given finality to the suit or other proceedings. If answer is in the negative, revision is not maintainable. If the impugned order is interim in nature or does not finally decide the lis, the revision is not maintainable.
8. In ***Shiv Shakti Coop. Housing Society's*** case (*supra*), Supreme Court has observed as follows:-

“32. 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 under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2) (i) 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(2)(i). 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.”

9. Amendment made in Section 115 CPC relates to procedure and no person has a vested right in a course of procedure. He has only the right to proceeding in the manner prescribed. A Statute is a creation of the Legislature and unambiguity in a

Statute is the determinative factor of Legislative intent. Undoubtedly, the cardinal principal of law is that the Court cannot read anything into a statutory provision as it is plain and unambiguous. Reference is made to '*Sanjay Kapoor's case*' and '*Satish Kumar Jain's case (supra)*'.

10. Undisputedly, an application under Section 24 of the Act is filed for an interim measure i.e. for determination of maintenance pendente lite and therefore, generally it does not call for any interference from the Court in exercise of its revisional power under Section 115 CPC, especially after the amendment having been carried out in the said Section. Therefore, Petitioner could not have invoked the provision of Section 115 CPC to challenge the impugned order of the Trial Court granting interim maintenance to the Respondent.
11. In "*Annurita Vohra Vs. Sandeep Vohra*", 2004 (110) DLT Delhi 546, it was observed:-

“5. The determination of maintenance pendente lite is essentially an interim measure which normally does not call for interference under Section 115 of the Code of Civil Procedure, especially after the amendments carried out in

the Code of Civil Procedure. On an understanding of the law as enunciated in *Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers and Ors.*, (2003) 6 SCC 659, no scope for discussion on this question remains.

12. Similar view was taken by me while deciding '*Narendra Pal Singh vs. Harpreet Kaur*', *CRP No.110/2009* vide order dated 8th April, 2010 while referring to '*Shiv Shakti Coop. Housing Society's case (supra)* and '*Annurita Vohra*' case (*supra*), I dismissed the revision petition as not maintainable vide order dated 8th April, 2010.
13. The next question to be considered is whether Petitioner can be allowed to amend the revision petition to be converted into a writ petition. To my mind, it cannot be allowed. Revision petition is filed invoking Section 115 CPC whereas writ petition is filed under Article 227 of the Constitution. They are two independent provisions.
14. Under Article 227 of the Constitution, the Court exercises its supervisory power and not revisional power. A Judge hearing revision petition is not allowed to hear the petition under

Article 227 and therefore cannot grant such relief as claimed in the revision petition.

15. In '*Narinder Singh @ Narinder Bahadur vs. Rajinder Prasad*', 110 (2004) DLT 618, while considering the similar question, it was observed:-

“3. The question that arises is what would be the proper and pragmatic approach to be adopted where a prayer is made for so called conversion of the Revision to that of a Civil Miscellaneous (Main) Petition under Article 227. It will be seen that in such cases, in the first place, a reply is called for to the application itself entailing a few hearings at least. The neat question that arises is whether the Judge who is not simultaneously allotted the roster of Civil Revisions as well as Petitions under Article 227 of the Constitution should entertain such a plea. It is misnomer that in *Surya Dev Rai* (supra), the Court observed that the change prayed for before me should be granted. The Hon'ble Court had addressed the question of the jurisdiction of the High Court while exercising its constitutional powers under that Article, especially in view of the non-maintainability of a Revision.”

16. The Court was pleased to dismiss the revision petition but protected the right of the Petitioner to file a petition under Article 227 of the Constitution, if he was advised to do so. *Anil Kak's case* (supra) relied upon by the Petitioner is of no

help to him.

17. In *Surya Dev Rai's case (supra)* while referring to *Shiv Shakti's case (supra)* it was observed that amendment in Section 115 CPC w.e.f. 1.7.2002 cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, therefore, interlocutory orders against which revision does not lie are open to challenge in and continue to be subject to, certiorari and supervisory jurisdiction of the High Court. This judgment in no manner deals with the power of this Court to allow amendment of a revision petition to be converted into a writ petition under Article 227 of the Constitution.

18. *M/s. Om Rice Mill; Jaleel Khan, Smt. Saroj Devi and S. Bishan's cases (supra)* relate to section 115 CPC pre-amendment and in view of the subsequent development of law, none of these judgments of different High Courts can come to the rescue of the Petitioner, especially when this Court has repeatedly held that a revision petition cannot be converted into a petition under Article 227 of the

Constitution.

19. Hence, the petition is dismissed as not maintainable. However, Petitioner is at liberty to file a petition under Article 227 of the Constitution, if so advised.

ARUNA SURESH, J.

MAY 05, 2010
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