

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM

THE HON'BLE THIRU JUSTICE M. DURAISWAMY

Review Application No.197 of 2015
against
C.R.P.SR No.35349 of 2015

S. Diwakar

..... Petitioner

vs.

L. Subramaniam

.... Respondent

Review Petition filed under Section 114 of the Code of Civil Procedure
against the order passed in C.R.P.SR No.35349 of 2015 dated 22.6.2015.

For Petitioner : Party-in-person

ORDER

The petitioner party-in-person has filed the above Review Application to review the order passed by this Court on 22.6.2015 in C.R.P. SR No.35349 of 2015, finding that the Civil Revision Petition, filed by him under Sec.115 of the Civil Procedure Code is not maintainable.

2. At the instance of the Registry of this Court, the matter was listed for Maintainability of the revision under Sec.115 of Civil Procedure Code.

3. Since the petitioner advanced his arguments on the merits of the case, I have no other option except to re-write the order dated 22.6.2015.

4. The revision petitioner is a practicing advocate, who appeared on behalf of the plaintiff in O.S.No.2309 of 2009 on the file of the XVIII Assistant Judge, City Civil Court, Chennai. The plaintiff filed an application in I.A.No.15241 of 2014 in O.S.No.2309 of 2009 under Order III Rule 4 of Civil Procedure Code to revoke the vakalath given to the revision petitioner. By Order dated 28.01.2015, the Trial Court allowed the application and revoked the vakalath given by the plaintiff in favour of the revision petitioner. Aggrieved over the fair and decreetal order passed in I.A.No.15241 of 2014 in O.S.No.2309 of 2009 dated 28.1.2015, the petitioner has filed the above Civil Revision Petition under Section 115 of the Civil Procedure Code.

5. The petitioner, at the time of listing the matter for maintainability, submitted that the revision under Sec.115 of Civil

Procedure Code is very much maintainable in view of the provisions of Sec.115 C.P.C. Further, the petitioner submitted that the application, filed by the plaintiff, was finally disposed of by the Trial Court and therefore, the revision, filed by the petitioner under Sec.115 C.P.C, is maintainable.

6. That apart, the petitioner also submitted that there is material irregularity in the order passed by the trial Court, which according to him, maintains the Civil Revision Petition under Sec.115 C.P.C.

7. However, this Court, while finding that the revision under Sec.115 of C.P.C is not maintainable, relied upon the proviso to Sec.115 of Civil Procedure Code and found that 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 the revision, would have finally disposed of the suit or other proceedings, the revision under Section 115 C.P.C is not maintainable.

8. In the case on hand, the plaintiff filed an application in I.A.No.15241 of 2014 in O.S.No.2309 of 2009 under Order 3 Rule 4 of Civil Procedure Code to revoke the vakalath given to the revision petitioner. The said application was allowed by the Trial Court. Even if the application, filed by the plaintiff was dismissed by the trial Court in favour of the revision

petitioner, as per the proviso to Section 115 of Civil Procedure Code, it would not finally dispose of the suit in any manner. Irrespective of the result in the application, the suit will be pending before the trial court.

9. This Court also relied upon the judgment reported in **2015 (1) CTC 460 (Pachamuthu vs K. Thangamuthu)**, wherein, this Court held that as per the proviso to sub section 1 of Section 115 of Civil Procedure Code, the High Court cannot exercise its revisional jurisdiction in respect of the order, that would not have resulted in disposal of lis itself, had decision been in favour of the party seeking revision.

10. Relying upon the proviso to Sec.115 of the Civil Procedure Code and the judgment of this Court reported in **2015 (1) CTC 460 (Pachamuthu vs K. Thangamuthu)**, this Court held that the revision, filed by the petitioner under Sec.115 of the Civil Procedure Code, is not maintainable.

11. Now, the petitioner has filed the above Review Application under Sec.114 of the Civil Procedure Code.

12. On a reading of the grounds of revision and also the submissions made by the petitioner, I do not find any error apparent on the

face of the record, as contemplated under Order 47 Rule 1 of Civil Procedure Code. In the absence of any error apparent on the face of the record, the order passed by this Court on 22.6.2015 does not warrant any interference in this Review Application.

13. In the guise of review application, the petitioner cannot re-argue the matter and the review is maintainable only in the case of any error apparent on the face of the record.

14. As already stated, since there is no error apparent on the face of the record, I do not find any merit in the review application and the review application is devoid of merits and the same is dismissed. No costs.

29-07-2015

sr

Index:yes/no
website:yes/no

Note: Issue Order copy on 31.7.2015

To

The XVIII Assistant Judge, City Civil Court, Chennai

M. DURAISWAMY,J.,

sr

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