

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1607 of 2012

and

M.P.No.1 of 2012

Pachamuthu

... Petitioner

vs.

K.Thangamuthu

...Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order of the Subordinate Judge, Sankari dated 20.08.2011 made in I.A.No.213/2011 in O.S.No.36/2009.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.N.Manokaran

ORDER

Heard Mr.P.Valliappan, learned counsel for the petitioner and Mr.N.Manokaran, learned counsel for the respondent. The impugned order of the trial court and other documents produced in the form of typed set of papers are also perused.

2. This is a revision filed under Section 115 of the Code of Civil Procedure against an order dismissing an application filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay in filing an application under Order IX Rule 13 of the Code of Civil Procedure, to set aside the ex-parte decree dated 29.01.2010 made in O.S.No.36/2009 on the file of Sub Court, Sankari.

3. A preliminary objection was raised as to the maintainability of the revision under Section 115 of the Code of Civil Procedure relying on the proviso to sub section (1), which reads as follows:

"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 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."

4. The contention raised on behalf of the respondent was that in case a decision in the Section 5 application (I.A.No.213/2011) had been in favour of the petitioner herein, it would not have resulted in the termination of the proceedings in O.S.No.36/2009 on the file of trial court and on the other hand, it

would have paved the way for the revival of the said suit itself, subject to the result of the application filed under Order IX Rule 13 of the Code of Civil Procedure and that hence the revision was not maintainable under Section 115 of the Code of Civil Procedure. In support of the above said contention, the learned counsel for the respondent relied on a judgment of the Hon'ble Supreme Court in ***Vidyodaya Trust and Others Vs. Mohan Prasad R and Others*** reported in **(2006) 7 SCC 452**. Paragraph 9 of the said judgment reads as follows:

"9. The amendment to Section 115 CPC is based on the recommendations made by the Malimath Committee. The said Committee was of the opinion that the expression employed in Section 115 CPC which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the parties against whom it was made, left open wide scope for exercise of powers with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision, but strongly felt that the powers should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso was deleted and a new proviso has been inserted so that the revisional jurisdiction is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is

satisfied. It is thus clear that the proviso creates an embargo in exercise of revisional power. "

5. The law in this regard has been clearly stated in the proviso to sub section (1) of Section 115 of CPC and the same has been interpreted by the Hon'ble Supreme Court in the above said judgment holding that the High Court cannot exercise its revisional jurisdiction under Section 115 of the Code of Civil Procedure in respect an order, if the order would not have resulted in the disposal of the *lis* itself, had the decision been in favour of the party seeking revision. Hence, this court does have no hesitation in coming to the conclusion that the present revision filed under Section 115 of the Code of Civil Procedure is not maintainable.

6. However, the learned counsel for the petitioner would submit that the restriction provided under Section 115 sub clause (1) proviso shall not be a bar for entertaining a revision in exercise of the power of superintendence of the High Courts over the Subordinate Courts under Article 227 of the Constitution of India and that in view of the fact that it has been demonstrated that the revision in this case, under Section 115 of the Code of Civil Procedure, is not maintainable, either the petitioner shall be granted liberty to file a revision under Article 227 of the

Constitution of India or in the alternative, the present revision itself can be converted into a revision filed under Article 227 of the Constitution of India. For the said purpose, a Memo dated 12.12.2014 has also been filed.

7. Mr.N.Manoharan, learned counsel for the respondent would fairly concede that instead of granting leave to the petitioner to file a fresh revision under Article 227 of the Constitution of India, which will consume more time, the present revision itself can be converted into and treated as a revision filed under Article 227 of the Constitution of India. Accordingly, this court, hereby directs the Registry to convert the revision into one filed under Article 227 of the Constitution of India from one filed under Section 115 of the Code of Civil Procedure.

8. When a revision is filed under Article 227 of the Constitution of India, it shall be akin to the original proceedings initiated in the High Court in which the respondent shall have the right to file a counter. Though such a right is available to the respondent, perhaps with a view to cut short the time consumed in the litigation in the revisional stage, learned counsel for the respondent submits that the revision can be disposed of taking into

account the pleadings made by the respondent in the counter statement filed before the court below and also taking into account the points to be urged in the arguments advanced by the learned counsel for the respondent. Accordingly, this court aims at a disposal of this revision converted into a revision filed under Article 227 of the Constitution of India.

9. After advancing his arguments to some extent, Mr.P.Valliappan, learned counsel for the petitioner submits that the petitioner is prepared to deposit a portion of the decretal amount as a condition for allowing the petition to condone the delay in filing the application under Order IX Rule 13 CPC. Mr.N.Manokaran, learned counsel for the respondent is also agreeable for giving such a chance to the petitioner by incorporating a condition in the order, directing the petitioner to deposit at least 50% of the decree amount as on date. The above said submissions made on both sides are recorded.

Accordingly, this civil revision petition is disposed of setting aside the order dated 20.08.2011 passed by the trial judge in I.A.No.213/2011 in O.S.No.36/2009 and allowing the said application on condition that the petitioner shall deposit 50% of the

decretal amount as on today, within a period of eight weeks from the date of this order, failing which, the above said interlocutory application, namely I.A.No.213/2011 shall stand automatically dismissed. In case of such deposit being made, the trial judge shall keep the same invested in interest bearing deposit so that the winning party may not lose the interest. However, there shall be no order as to cost. Consequently, the connected M.P.No.1 of 2012 is closed.

12.01.2015

Index : Yes
Internet : Yes
asr

To
The Subordinate Judge, Sankari

Note to Office:

Issue order copy on 19.01.2015

P.R.SHIVAKUMAR, J.

asr/-

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and

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