

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. No.122/2015 & C.M. No.15037/2015**

Decided on : 19th August, 2015

NARAYAN PARWAL Appellant
Through: Mr. J.M. Bari & Ms. Meenakshi Bari,
Advocates.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Anil Sapra, Senior Advocate with
Mr. Kamal Rathi & Ms. Rupali Kapoor,
Advocates.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. By virtue of the present civil revision petition, the petitioner has challenged the order dated 16.7.2015 passed by the court of Ms. Jasjeet Kaur, the learned Civil Judge, New Delhi in suit No.223/2013 in case titled *Narayan Parwal vs. Union of India and others*.

2. The aforesaid order was passed by the learned Civil Judge rejecting the two applications filed by the petitioner. The first application was filed under Order 23 Rule 3A read with Section 151 CPC seeking recall of the compromise order dated 25.10.2013 on the ground that the fraud

was played upon the petitioner/plaintiff by respondent/defendant Nos.2 and 3 in connivance with one person, namely, Ashok Kumar Khattar. Similarly, the learned counsel for the petitioner has also contended that another application under Order 39 Rule 1 and 2 CPC for seeking an ad interim relief of restraining Union of India from converting the leasehold rights into freehold in favour of respondent Nos.2 and 3 was also rejected.

3. Briefly stated the facts of the case are that a civil suit for declaration and injunction came to be filed by the present petitioner against Union of India making respondent Nos.2 and 3, namely, Unique Buildwell (India) Pvt. Limited and Trinity Buildcom (India) Pvt. Limited respectively as parties. It was alleged that a declaration was issued that the mutation of the property situated at plot No.24, Block No.148 known as 7 Hailey Road, New Delhi in which the petitioner had interest to the extent of 9.33 per cent in favour of respondent Nos.2 and 3 to be declared as wrongful null and void and the same be cancelled. The aforesaid matter was contested by respondent Nos.2 and 3. During the pendency of the suit, an agreement was entered into on 25.10.2013 between the present petitioner and one Ashok Kumar Khattar on behalf of respondent Nos.2 and 3 by virtue of which Ashok Kumar Khattar had agreed to make

a payment of Rs.1 crores in cash and Rs.1,50,00,000/- by way of cheque to the petitioner towards the full and final settlement of his claim in the said property. On the basis of a joint application purported to have been filed by the petitioner under Order 23 Rule 3A read with Section 151 CPC duly supported by the affidavit of the petitioner and the said Ashok Kumar Khattar, the suit was dismissed as withdrawn.

4. After withdrawal of the suit on 25.10.2013, the petitioner has filed the present application under Order 23 Rule 3A CPC claiming that a fraud has been played on him by Ashok Kumar Khattar in connivance with respondent Nos.2 and 3 inasmuch as he has not been paid in cash and the cheque which was issued to him by Ashok Kumar Khattar, was dishonoured. It has been stated that a cheque of Rs.1 crores was issued in his favour by Ashok Kumar Khattar drawn on State Bank of India which was dishonoured as the payment was stopped by the banker of Ashok Kumar Khattar. On the basis of these facts, the petitioner has claimed that the decree deserves to be set aside and the matter deserves to be tried.

5. The petitioner in support of his contention has placed reliance on a judgment of this court to contend that decree which has been obtained by

fraud deserves to be set aside and even the suit which has been withdrawn will tantamount to a decree.

6. The learned senior counsel Mr. Anil Sapra appearing on behalf of respondent Nos.2 and 3 has raised preliminary objection with regard to maintainability of the revision petition; firstly, on the ground that the present petitioner has filed a composite revision petition against the order dated 16.7.2015 which rejected his two applications while as he ought to have filed two separate revision petitions. By virtue of the impugned order two applications of the petitioner one under Order 23 Rule 3A read with Section 151 CPC and the other under Order 39 Rule 1 and 2 CPC was rejected while only one petition has been filed and therefore, the petition as such is not maintainable.

7. The second submission made by the learned senior counsel for the petitioner is that as the suit was dismissed as withdrawn, consequently, no decree was passed and therefore, the present application under Order 23 Rule 3A CPC for setting aside the decree does not arise because withdrawal of the suit does not tantamount to passing of a decree.

8. Thirdly, it has been contended by the learned senior counsel that a perusal of Section 115 CPC would clearly show that the revision is not

maintainable on account of the proviso to Section 115 because a revision would be maintainable only if the rights of the parties are finally adjudicated by an order against which such revision has been preferred. It is pertinent in this regard to reproduce the provision of Section 115 of the CPC, which reads as under :-

“115. Revision.- (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court 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 may make such order in the case as it thinks fit:—

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.

(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.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.”

9. Even on merits Mr. Sapra, the learned senior counsel has contended that so far as Ashok Kumar Khattar is concerned, no valid authority was given to him by respondent Nos. 2 and 3 to enter into an agreement on their behalf shown by the petitioner and in the absence of any valid authority having been placed on record, it was not open to the petitioner to contend that Ashok Kumar Khattar had the authority to enter into an agreement for and on behalf of respondent Nos.2 and 3.

10. I have considered the submission made by Mr. Anil Sapra, the learned counsel for the respondents and Mr. J.M. Bari, the learned counsel for the appellant. I find force in the contention of Mr. Sapra on all three counts. Firstly, on technicality itself the present revision petition is not maintainable on account of the fact that the two applications of the petitioner has been disposed of by a common order and therefore two separate revision petition ought to have been filed while the present petitioner has chosen to file only one petition. The second point for rejection of the present revision petition is that after amendment in 1999 to Section 115 of the CPC the power of revision has been considerably

limited by the legislature. The proviso to Section 115 sub-Section (1) clearly lays down that power of revision can be exercised by the High Court only if the applicant who had come in revision and his application is allowed then it would result in final disposal of the matter. In the instant case the application of the petitioner for reopening the order by virtue of which the suit was dismissed as withdrawn if set aside, it would not result in final disposal of the suit on the contrary, it will open the suit afresh despite having been withdrawn, therefore, on this short ground itself the revision petition is not maintainable.

11. Last but not the least, the suit which was filed by the petitioner was against two companies, namely, M/s. Unique Buildwell (India) Pvt. Ltd and M/s. Trinity Buildcon (India) Pvt. Ltd. apart from Union of India. The compromise which was arrived at by the petitioner was with Shri Ashok Kumar Khattar. The application for compromise was supported by the Affidavit of the petitioner and Ashok Kumar Khattar although in the application it has been stated that Ashok Kumar Khattar was duly authorized by the two private companies but no letter of authority has been shown to be in existence by the petitioner which authorize him to settle the matter for and on behalf of these two companies. Ashok Kumar

Khattar was not a party to the suit, therefore, any settlement which was arrived at between Ashok Kumar Khattar and the present petitioner was an independent transaction and if at all there was a default in payment of cash or cheque amount by Ashok Kumar Khattar to the petitioner that gives rise to a separate cause of action to the petitioner to sue Ashok Kumar Khattar and the suit which has been withdrawn voluntarily by the petitioner cannot be permitted to be recalled and tried on this ground.

12. I have been given to understand that the petitioner has already filed a complaint under Section 138 of the Negotiable Instruments Act against Ashok Kumar Khattar for dishonor of the cheque, if that be so, he can pursue that remedy. However, the present order of the withdrawal of suit cannot be permitted to be recalled.

13. For the reasons mentioned above, I feel that the present revision petition filed by the petitioner is totally misconceived and the same is liable to be dismissed. The same is accordingly dismissed.

V.K. SHALI, J.

AUGUST 19, 2015
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