

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CIVIL REVISION No. 53 of 2020**

Reserved on 14-1-2021

pronounced on 19-1-2021

Gulam Chisti S/o Late Ali Mohammad Aged About 46 Years Occupation Agriculturist R/o Village and Post Madwaniya Police Station Ramna District Garhwa (Jharkhand) Pin- 822128, Present Address Ward No. 40 In The House Of Tibat Bibi, Pairadise Gali Mominpura Ambikapur, District Surguja, CG

---- Applicant**Versus**

1. Govind Kumar S/o Santosh Kumar Aged About 24 Years Cast- Teli, R/o Village- Churela (Satnamipara) P.S. Bhatgaon Distt. Balodabazar (CG)
2. Proprietor Shriniwas Roadlines A-410 Chaitanya Tower Anant Vihar Colony, Dalshivani Road Mova Raipur, District Raipur, CG
3. Branch Manager, United India Insurance Company Ltd. Division Office Near Kumkum Hotel Ambikapur Brahm Road Ambikapur P.S. And Tahsil Ambikapur, District Surguja, CG
4. Kaimun Bibi W/o Gulam Chisti Aged About 44 Years R/o Village And Post Madwaniya Police Station Ramna District Garhwa (Jharkhand) Pin- 822128, Present Address Ward No. 40 In The House Of Tibat Bibi, Pairadise Gali Mominpura Ambikapur, District Surguja, CG

---- Non-applicants

For applicant	: Mr. A.N. Pandey, Adv.
For non-applicants	: Not noticed

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. Applicant has preferred instant Civil Revision against the order dated 23/11/2020 passed by Motor Accident Claim Tribunal Ambikapur, District Surguja (C.G.) in Claim Case No. 128/2018 whereby and whereunder he rejected his application for premature withdrawal of the fixed deposit amount of Rs. 3,00,000/-.
2. Applicant had filed an application before the said Claim Tribunal for premature withdrawal of the fixed deposit amount Rs.3,00,000/- for marriage of his son Akhtar Ali which was fixed on 28-11-2020 and daughter

Rehana Khatoon which was fixed on 29-11-2020 which was rejected by the Tribunal on 23-11-2020 stating that it has not been explained that the amount would be spent in which heads and statement of expenses was not filed. The amount was deposited on the ground of smooth livelihood.

3. Being aggrieved, the applicant has preferred instant revision.

4. In brief the applicant's case regarding the revision is that the order of said Tribunal is perverse and illegal. The Tribunal did not consider his reasonable and proper grounds, hence the order of the Tribunal may be set-aside and his application may be allowed.

5. Counsel for applicant placed reliance on orders of co-ordinate Bench of this Court in the matter of **Smt. Sunita vs. Guddu Ram and others** passed on 07/09/2017 in Civil Revision No. 154/2017, and in the matter of **Smt. Jaimuni vs. Shivcharan Singh and others** dated 14/08/2018 in Civil Revision No. 80/2018.

6. For the proper adjudication it would be pertinent to mention the provisions of Section 115 of Civil Procedure Code (for short, '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.

Explanation.—In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.”

7. It would be worthy to mention that the proviso had been incorporated in aforesaid Section by amendment from 1/7/2002.

8. In the matter of **Shiv Shakti Coop. Housing Society Nagpur Vs. Swaraj Developers and others** [(2003) 6 SCC 659] Hon'ble Supreme Court in para 32 observed as under :-

“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 the 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. In the matter of **Surya Dev Rai -v- Ram Chander Rai and others** [(2003) 6 SCC 675] Hon'ble Supreme Court in para 4 observed as under :-

“4. Section 115 of the Code of Civil Procedure, as amended, does not

now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the proviso inserted under sub-section (1) of Section 115 CPC. The amendment is based on the Malimath Committee's recommendations. The 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 party against whom it was made, left open wide scope for the exercise of the revisional power 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 power should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso, being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.”

10. Looking to the provisions of Section 115 of the CPC and aforesaid judicial precedents laid down by Hon'ble Supreme court following legal propositions emerge regarding maintainability of civil revision :-

- i. Any subordinate court to such High Court has decided any case which includes any order made, or any order deciding an issue, in the course of a suit or other proceeding,
- ii. No appeal lies against it,
- iii. Such subordinate court -
 - a. have exercised a jurisdiction not vested in it by law, or
 - b. failed to exercise a jurisdiction so vested, or
 - c. acted in the exercise of its jurisdiction illegally or with material irregularity,

then revision shall lie in the High Court,

iv. Revision shall not lie against the interlocutory order 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 proceeding.

11. In the case in hand prima facie it does not appear that while passing the impugned order the same claim tribunal had committed illegality or material irregularity while exercising its jurisdiction at the time of rejecting the said application of applicant. Moreover said fixed dates 28/11/2020 and 29/11/2020 have passed.

12. Moreover, now the core question is that whether the impugned order is revisable. The test is that the impugned order, if it had been made in favour of applicant of this revision, would have finally disposed of the claim case. Answer is 'not'. Hence, the aforesaid proviso of Section 115 of CPC is applicable against the applicant.

13. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid provision of proviso, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court, this Court finds that applicant does not get any help from aforesaid orders of co-ordinate Bench of this Court and the revision is not maintainable.

14. Looking to the above mentioned facts and circumstances of the case, this Court finds that instant revision is not fit for admission, because the Claims Tribunal did not commit illegality or material irregularity and instant revision is not maintainable. Consequently, instant revision is not admitted for final hearing and dismissed at motion hearing stage.

Sd/-
(Sharad Kumar Gupta)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR
Order Sheet
CR No. 53 of 2020
Gulam Chisti -v- Govind Kumar and others

19-1-2021	Shri A.N. Pandey, Counsel for the applicant. Order delivered, signed and dated. As prayed, certified copy of the impugned order be returned to the counsel for the applicant after retaining photocopy of the same in the file. Sd/- (Sharad Kumar Gupta) Judge