

IN THE HIGH COURT OF ORISSA, CUTTACK

C.R.P. No. 2 of 2022

An application under Section-115 of the Code of Civil Procedure, 1908.

Smt. Hemalata Padhy

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Petitioner

-Versus-

Khiti Swain & another

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Opp. Parties

For Petitioner:

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Mr. S.Dash,
Advocate

For Opp. Parties:

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None

J U D G M E N T

P R E S E N T:

MR. JUSTICE BISWAJIT MOHANTY

सत्यमेव जयते

Date of Hearing: 21.03.2022

Date of Judgment: 30.03.2022

B. Mohanty, J.

This civil revision has been filed challenging the judgment dated 8.12.2021 passed by the learned District Judge, Ganjam, Berhampur in F.A.O. No. 5 of 2020 filed under Order 43 Rule-1(d) of the Code of Civil Procedure, 1908, for short “the Code”.

2. The case of the present petitioner is that she being plaintiff had instituted C.S. No. 168 of 2012 before the learned Civil Judge (Sr.Divn.), Berhampur, Ganjam impleading the present opposite parties as defendants. According to Mr.Dash, learned counsel the petitioner the said civil suit which was valued at Rs.67,600/- was decreed ex-parte against the defendants and accordingly the defendants were directed to vacate the suit house and pay arrear rent and damages. The present opposite parties filed C.M.A. No. 17 of 2019 before the learned Civil Judge (Sr.Divn.), Berhampur under Order 9 Rule-13 of “the Code” read with Section 5 of the Limitation Act, 1963 with prayer to set aside the ex-parte judgment and decree in C.S. No. 168 of 2012 by condoning the delay in filing the C.M.A. for restoration of the original suit to its file. The same having been dismissed on contest, the opposite party No.1 preferred an appeal under Order 43 Rule-1(d) of “the Code” styled as F.A.O. No.5 of 2020 against such dismissal order dated 13.2.2020 passed by the learned Civil Judge (Sr.Divn.), Berhampur. The said

F.A.O. was allowed on contest on 8.12.2021 against the present petitioner subject to payment of cost, consequently the learned District Judge set aside the ex-parte order dated 3.9.2013 passed in C.S. No. 168 of 2012 so also the ex-parte judgment and decree passed in the said suit under Annexure-2. Challenging the said judgment dated 8.12.2021 under Annexure-2 as rendered in F.A.O. No. 5 of 2020, the present civil revision has been preferred.

3. At the outset when Mr.Dash, learned counsel for the petitioner was asked about maintainability of the civil revision as the impugned judgment does not arise out of a original suit or other original proceeding in the background of the decision of the Supreme Court as rendered in ***Vishnu Awatar V. Shiv Autar and others*** reported in ***(1980) 4 SCC 81*** and the judgment of this Court as rendered in ***Smt. Banarasi Devi Saha V. Basudev Lal Dhanuka*** reported in ***Vol. 34(1992) O.J.D. 462(Civil)*** and also on the ground that the suit was valued at less than Rs.5/- lakhs, Mr. Dash submitted

that civil revision is maintainable as the impugned judgment under Annexure-2 though passed in an appeal is clearly covered by the phrase 'other proceedings' as used in Section 115 of "the Code" as in force in State of Odisha as on date. In this context he relied upon following four decisions.

(i) ***Ram Chandra Aggarwal and another V. the State of Uttar Pradesh and another*** reported in ***A.I.R. 1966 Supreme Court 1888.***

(ii) ***M/s Simplex Engineering and Foundary Works Ltd and two others V. Bhubaneswar Pattnaik*** reported in ***2003(I) OLR-508.***

(iii) ***Sri Surendranath Tripathy V. Smt. Indira Panda*** reported in ***2003 (Supplementary) OLR-746*** and

(iv) ***Md. Noorullah Shareef V. Senior Post Master, General Post Office (GPO), Buxibazar, Cuttack-1*** reported in ***2010(1)OLR-42.***

4. With regard to decision of the Supreme Court in ***Vishnu Awatar (supra)*** and of this Court in ***Smt. Banarasi Devi Saha(supra)***, Mr.Dash submitted that

these decisions are factually distinguishable & have no application to the present case.

5. In order to understand the submissions advanced, this Court thinks it appropriate to quote Section 115 of the Code of Civil Procedure, 1908 as is in force in the State of Odisha today.

“115. Revision-(1) The High Court, in cases arising out of original suits or other proceedings of the value exceeding five lakhs rupees and the District Court in any other cases, including a case arising out of an original suit or other proceedings instituted before the commencement of the Code of Civil Procedure (Orissa Amendment) Act, 2010 may call for the record of any case which has been decided by any Court subordinate to the High Court or the District Court, as the case may be, 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 to vested; or

(c) to have acted in exercise of its jurisdiction illegality or with material irregularity, the High Court or the District Court, as the case may be, may make such order in the cases as it thinks fit;

Provided that in respect of cases arising out of original suits or other proceedings of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this Section.

(2) The High Court or the District Court, as the case may be, shall not under this section, vary or reverse any order, including an order deciding an issue, made in

the course of a suit or other proceedings, 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.

(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 or District Court, as the case may be.

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

6. In the instant case this Court is concerned with the meaning and interpretation of the phrase ‘other proceedings’ as used in Section 115 as quoted above.

7. In **Ram Chandra Aggarwal** case (*supra*), there exists no discussion on the above noted phrase as it occurs in Section 115 C.P.C. of “the Code”. It mainly deals with the word “proceeding” as used in Section 24(1)(b) of “the Code”. While interpreting the same word, the Supreme Court has made it clear that the expression ‘proceeding’ as used in that Section is not a term of art which has acquired a definite meaning. What it means when it occurs in a particular statute or a provision of a statute is to be ascertained by looking at the relevant

statute and the context in which it has been used. In the opinion of this Court not only the language of Section 24(1)(b) and Sub-Section of 115 of “the Code” are different so also the context in which the phrase ‘other proceeding’ has been used. While Section 115 deals with power of this Court to revise an order; Section 24(1)(b) deals with general power of this Court relating to transfer and withdrawal of cases. Therefore, the context in which the phrase ‘other proceeding’ has been used in both the statutes are different and same general meaning cannot be given to the phrase ‘other proceedings’ as occurring under Section 115 of C.P.C. It is more so particularly when the phrase ‘other proceedings’ has been authoritatively interpreted by the Supreme Court in ***Vishnu Awatar case (supra)*** to mean proceedings of an original nature and the same cannot include decisions rendered in appeals and revisions. It is to be reiterated here that the Supreme Court in ***Ram Chandra Aggarwal case (supra)*** has made it clear as indicated earlier that the expression proceeding used in the statute

does not have a definite meaning and without doubt its interpretation will vary from statute to statute depending on the context in which the said word has been used. Therefore this decision which does not interpret the phrase “other proceedings” as used in Section 115 is of no help to the petitioner.

8. With regard to ***M/s Simplex Engineering and Foundary (supra)*** relied upon by Mr.Dash it may be noted here that the same is also factually distinguishable as there unlike the present case an order passed by the learned Civil Judge (Sr.Divn.), Rourkela in an application under Order 26 Rule 1 C.P.C. filed in connection with an Order 9 Rule 13 petition relating to a suit where ex-parte decree has been passed by the trial/original Court was under challenge. Even then it was held there that since the application filed by the petitioner therein under Order 26 Rule 2 being not prescribed in GRCO to be registered as M.J.C. or Misc. Case and that being an Interlocutory Application relating to examination of a witness in commission, therefore the same cannot be given the

meaning of the term proceeding and thus the impugned order is not revisable under Section 115 of “the Code”. In such background, this Court fails to understand how this decision will be of any help to the petitioner. In any case it is reiterated that the impugned order passed there arose out of a suit unlike in the present case.

9. In ***Sri Surendranath Tripathy (supra)*** again the facts are different. There the suit was dismissed for default and the plaintiff filed an MJC under Order 9 Rule 9 CPC to restore the suit. When such an application was allowed restoring the suit that order was challenged in the civil revision. There also unlike the present case what was under challenge was an order passed by the Court arising out of the original suit itself. Further in that case there exists no discussion about the meaning of phrase ‘other proceedings’, though the question of maintainability of the revision was raised. In fact in that case there exists no issue relating to interpretation of phrase ‘other proceedings’. Therefore this case is also

factually distinguishable and cannot be of any help to the petitioner.

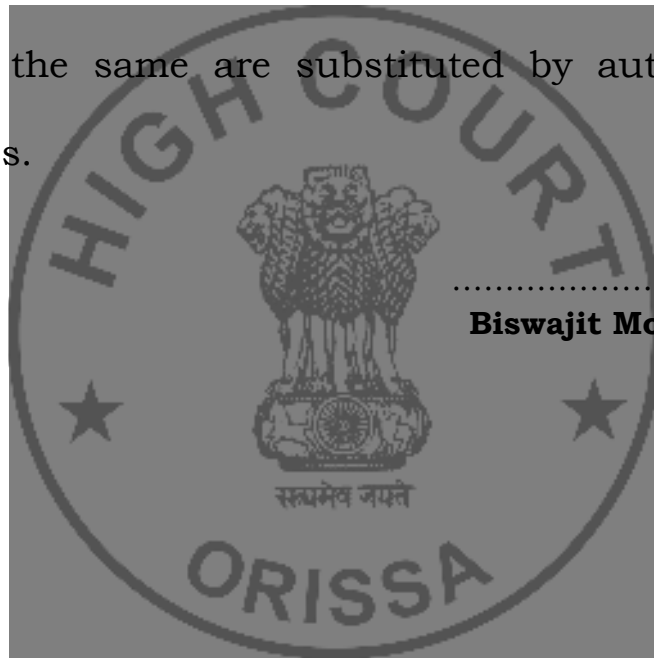
10. With regard to the last decision cited by Mr.Dash i.e. **Md. Noorullah Shareef (supra)** it may be noted here that though the question of maintainability of revision was raised but the said question was not raised vis-à-vis the meaning of phrase 'other proceedings'. No doubt there, this Court entertained the Civil Revision challenging the order of the Ad-hoc Additional District Judge (FTC-1), Cuttack in Misc. Appeal No. 119 of 2002, however the issue whether the order passed in an appeal by an Appellate Court can be revised under Section 115 by this Court was not raised. In fact attention of this Court was not drawn to the decision rendered in **Vishnu Awatar (supra)** and **Banarasi Devi Saha (supra)**. Since the issue with which this Court is concerned at present is with regard to the meaning of the phrase 'other proceedings' was not raised there and the attention of the Court was not drawn to the decisions rendered in **Vishnu Awatar (supra)** and **Banarasi Devi Saha (supra)**, the

said decision cannot be of any help to the petitioner. Rather a holistic reading of the judgment of Supreme Court as rendered in ***Vishnu Awatar (supra)*** makes it clear that the phrase ‘other proceedings’ can only mean proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions pronounced in appeals and revisions. The words “ or other proceedings” have to be read ejusdem generis with the words “original suits”. In other words the phrase ‘other proceedings’ will not cover cases arising out of decisions made in the appeals or revisions. If the District Court has not decided in its original jurisdiction then such order is not amenable to the revisional jurisdiction of High Court. While referring to the language of Section 115 of the Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978, which is almost in pari materia with the provision of Section 115 of “the Code” as is in force in State of Odisha so far as the use of phrase “other proceeding” is concerned, the Supreme Court pronounced clearly that the decisions of

the District Courts rendered in appeal or revision are beyond revisional jurisdiction of High Court. But where original decision has been made by the District Court, the High Court's revisional power will come into play. The same thing was reiterated by this Court in **Smt. Banarasi Devi Saha (supra)** where issue involved was whether a civil revision under Section 115 of "the Code" would lie against a revisional order passed by the District Judge exercising the jurisdiction under the same section as amended. There this Court held that a revision does not lie to this Court against a revisional order passed by the High Court. In such background since in the present case the impugned order pertains to an order passed in appeal filed under Order 43 Rule (1)(d) CPC, this Court is of the opinion that Civil Revision is not maintainable.

11. Further conceding for a moment but not admitting that the impugned order is covered by the phrase "other proceedings" as used in Sub-Section 1 of Section 115 of 'the Code', then also the present civil revision is not maintainable as it arises in connection

with an original suit pending before the trial Court whose valuation does not exceed Rs.5/- lakhs. For all these reasons, the civil revision being not maintainable, is hereby dismissed. However the dismissal of civil revision will not be a bar for the petitioner to file appropriate application before appropriate forum for redressal of her grievances, if she is so advised. For such purposes certified copies enclosed to this petition can be taken back after the same are substituted by authenticated Xerox copies.



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Biswajit Mohanty, J.