

IN THE HIGH COURT OF ORISSA, CUTTACK

C.R.P. No. 6 of 2022

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

Kailash Chandra Panda & others Petitioners

-Versus-

State of Orissa & others Opp. Parties

For Petitioners: - Mr. B.P.Pradhan,
Advocate

For Opp. Parties: - Mr. Sk. Zafrulla,
Addl. Standing Counsel

J U D G M E N T

P R E S E N T:

MR. JUSTICE BISWAJIT MOHANTY

Date of Hearing: 21.03.2022 Date of Judgment: 30.03.2022

B. Mohanty, J. This civil revision has been filed challenging the order dated 22.12.2021 passed by the learned Additional District Judge, Dharamgarh in R.F.A. No. 6 of 2017 allowing the petition filed by the opposite parties under Section 5 of the Limitation Act, 1963.

2. The case of the petitioners according to Mr.Pradhan, learned counsel for the petitioners is that the petitioner Nos. 1 to 8 have filed C.S. No. 186 of 2012 valued at Rs.49,000/- in the Court

of learned Civil Judge (Jr.Divn.), Dharamgarh for declaration of their right title and interest and confirmation of possession over the suit schedule tank. Further they have prayed for declaration of their right to fish, water for irrigation and improvements over the suit tank. They also prayed for permanent injunction against present opposite parties from interfering with the possession and ownership of the plaintiffs. The said suit was decreed. Challenging the judgment and decree dated 25.12.2014 the present opposite parties filed R.F.A. No. 6 of 2017 making the present petitioners as respondents along with a petition under Section 5 of the Limitation Act, 1963 for condonation of delay. The delay condonation petition having been allowed subject to payment of cost of Rs.10,000/- vide order dated 22.12.2021 passed in R.F.A. No. 6 of 2017, the said order has been challenged here in this civil revision.

3. At the outset when Mr.Pradhan, learned counsel for the petitioners was asked about the maintainability of the civil revision on the ground that the impugned order does not arise out of a out of a original suit or other original proceeding in the background of the decision of 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

valuation of the original suit does not exceed Rs.5/- lakhs, Mr. Pradhan contended that the impugned order under Annexure-5 passed in a petition for condonation of delay is clearly covered by the phrase 'other proceedings' as used in Section 115 of the Code of Civil Procedure, 1908 for short, "the Code" as is presently in force in the State of Odisha pursuant to the Code of Civil Procedure (Orissa Amendment) Act, 2010. He further contended that the impugned order cannot be construed as an order passed in an appeal as no appeal exists in the eyes of law unless the petition under Section 5 of the Limitation Act, 1963 is allowed condoning the delay. Accordingly he reiterated that the present civil revision is maintainable. In this context he relied upon following three decisions which are as follows:-

- (1) ***Ainthu Charan Parida V. Sitaram Jayanarayan Firm and another*** reported in **OLR Full Bench (1984)-470.**
- (2) ***Mathew M.Thomas and others V. Commissioner of Income-tax*** reported in **AIR 1999 SC 999.**
- (3) ***Laxmidhara Samantasinghara and others V. the Alarnath Dhanda Mulaka Mahavidyalaya Managing Committee represented through its Secretary-cum-Principal & others*** reported in **2019(Supp.II) OLR-129.**

4. With regard to decision of the Supreme Court in ***Vishnu Awatar (supra)*** and of this Court in ***Smt. Banarasi Devi***

Saha(supra), Mr.Pradhan submitted that these decisions are factually distinguishable and 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. With regard to **Ainthu Charan Parida (supra)** it may be noted here that in that case the issue involved was as to whether an order rejecting memorandum of appeal or dismissing an appeal following the rejection of an application under Section 5 of the Limitation Act for condonation of delay in preferring an appeal is a decree. Thus the said decision is factually distinguishable. There was also no issue relating to interpretation of the phrase 'other proceedings' as used in Section 115 C.P.C. and accordingly no discussion exists there about maintainability of Civil Revision petition on the basis of such issue. Therefore this case no way helps in resolving the issue of maintainability with which this Court is presently concerned. Rather the decision of the Supreme Court in **Vishnu Awatar (supra)** and this Court in **Smt. Banarasi Devi Saha (supra)** which relies on Vishnu Awatar case does make it clear that 'other proceedings' cannot include decisions rendered in appeals and revisions.

8. With regard to the decision of the Supreme Court in **Mathew M.Thomas and others(supra)**, it may be noted that in the said case there exists no reference to Section 115 of "the Code"

and interpretation of the phrase 'other proceedings' as used in that Section. Thus the said case where the issue was applicability of a beneficial CBDT Circular to the proceeding at appellate stage is factually distinguishable. Further as indicated in **Ram Chandra Aggarwal and another V. State of Uttar Pradesh and another** reported in **AIR 1966 S.C. 1988** the word "proceeding" does not have a fixed meaning. Its meaning depends upon the way it is used in a particular statute and the context of such use. Thus this decision cannot be of any help to the petitioners. Moreover in view of the authoritative pronouncement of the Supreme Court in the case of **Vishnu Awatar (supra)** to the effect that the phrase 'other proceedings' occurring in Section 115 of "the Code" can only mean proceedings of an original nature and the same will not cover decisions pronounced in appeals and revisions, the decision as rendered in **Mathew M.Thomas and others (supra)** dealing with applicability of a beneficial circular at an appellate stage will be of no help to the petitioners to make the present civil revision maintainable.

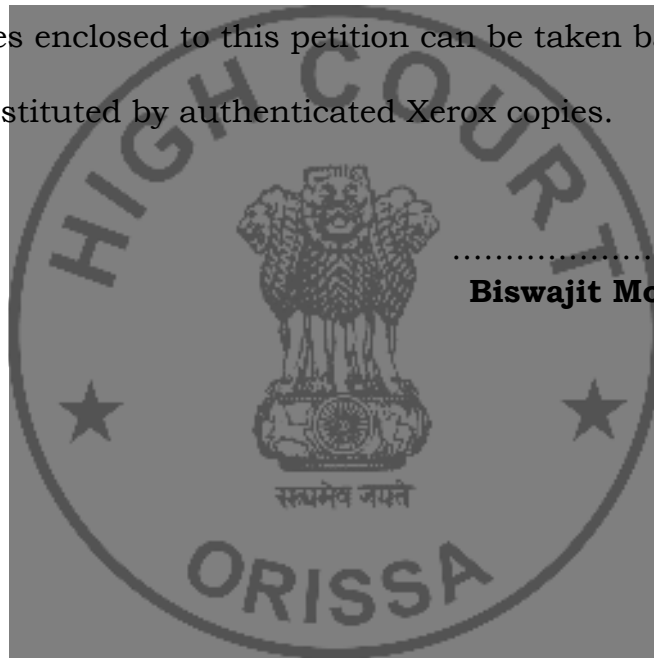
9. With regard to **Laxmidhara Samantasinghara and others (supra)** though this Court interfered with an order passed by the learned District Judge, Puri allowing an application under Section 5 of the Limitation Act arising out of RFA No. 31 of 20116 entertaining the appeal however the question of maintainability vis-

à-vis the impugned order was not raised there. There also exists no issue relating to interpretation of the phrase ‘other proceedings’ as occurring in Section 115 of “the Code”. Further the attention of this Court in that case was not drawn to the case of **Vishnu Awatar (supra)** and **Smt. Banarasi Devi Saha (supra)**. Accordingly, this decision is of no help to the petitioners. 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 proceeding. 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 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 connection with appeal styled as R.F.A. No. 6 of 2017, this Court is of the opinion that Civil Revision is not maintainable.

10. To the contention of Mr. Pradhan that the impugned order under Annexure-5 cannot be construed to have been passed in the appeal, this Court is of the opinion that such a contention cannot be accepted as limitation petition has no independent existence bereft of appeal. It may be noted here that even the petition for condonation of delay was not separately numbered. So order passed therein cannot be segregated from the appellate jurisdiction of the learned District Judge. Even otherwise it cannot be said that order passed in the limitation petition was passed in any original or independent proceeding. For all these reasons the civil revision petition is not maintainable. 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 whose valuation is less than Rs.5/- lakhs. For all these reasons the civil revision is not maintainable and is accordingly dismissed. However the dismissal of civil revision will not be a bar for the petitioners to file appropriate application before appropriate forum for redressal of their grievances, if they are 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.

Orissa High Court, Cuttack
The 30th March, 2022 /Kishore