IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL

ON THE 27th OF OCTOBER, 2023

CIVIL REVISION No. 545 of 2021

BETWEEN:-

RADHESHYAM S/O BABULAL VIJAYVARGIYA, AGED ABOUT 75 YEARS, OCCUPATION: BUSINESS MANASA,TEHSIL MANASA (MADHYA PRADESH)

.....PETITIONER

(SHRI ROHIT KUMAR MANGAL, ADVOCATE FOR PETITIONER)

AND

KHWAJA HUSAIN S/O GHASIJI, AGED ABOUT 70 YEARS, OCCUPATION: NIL MANASA,TEHSIL MANASA (MADHYA PRADESH)

.....RESPONDENT

(SHRI SATISH JAIN, ADVOCATE FOR RESPONDENT)

This revision coming on for orders this day, the court passed the following:

ORDER

With the consent of both the parties, matter is heard finally at motion stage.

Heard on objection raised by respondents with respect to maintainability of revision under Section 115 of Code of Civil Procedure, 1908.

(2) This civil revision has been filed under Section 115 of Civil Procedure Code, 1908 (for short ***'CPC')*** by which the petitioner is challenging the order dated 12.11.2021 (Annexure-P/1) passed in MJC No.09 of 1987 passed by First Civil Judge, Manasa, District -

Neemuch (MP), whereby execution proceedings were dismissed without satisfaction by wrongly appreciating the judgments of Hon'ble Supreme Court and High Court.

(3) *Learned counsel* for the respondent relying upon the judgments of **Johrabi and Others vs. Jageshwar and Others, Toran Singh vs. Imrat Singh and Others and Laluram vs. MP Grihnirman Mandal** and also referring to Section 115 of CPC submits that in the instant case, civil revision is not maintainable, as no proceedings are pending before the Courts below. The impugned order has finally terminated the proceedings and no proceedings are pending before the executing court, therefore, revision under Section 115 of CPC is not maintainable.

(4) *Per contra,* learned counsel for the petitioner after referring to Section 115 of CPC including the judgments relied upon are **Sangita Sunil Bhardiya vs. Rajendra Babulal Sarnot, Jhansi Oral Tollway Pvt. Ltd. vs. Bank of India and Others, Ismail Hussain Fatmi vs. Radheshyam and Roshanlal Tiwari and Others vs. Pannalal Tiwari and Others** submits that the impugned order is not of interim nature, instead, it has finally decided the proceedings, therefore, revision under Section 115 of CPC is maintainable only if order is interim in nature, then revision is not maintainable. It is also urged that against the impugned order, no appeal is provided under the above mentioned order and therefore, revision is maintainable under the CPC.

(5) *Learned counsel* for the petitioner submits that above provision is not applicable because the impugned order is not in

interim nature.

(6) I have heard learned counsel for the parties and have perused the records of the case.

(7) A perusal of the record and the impugned order dated 12.11.2021 reveals that vide above order the execution proceedings have been closed and therefore, this final order is not an interim order, therefore, in view of the law laid down in the aforesaid cases, this revision petition is maintainable and hence the objection raised by the respondent counsel is disallowed.

(8) Record of MJC No.09/1987 pending before the First Civil Judge, Junior Division, Manasa, District-Neemuch be called for.

(ACHAL KUMAR PALIWAL)
JUDGE

Arun/-

ARUN NAIR

Digitally signed by ARUN NAIR
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