



2025:DHC:4767



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16.05.2025

+ **C.R.P. 121/2025 & CM APPL. 24193/2025**

MOHD. SAIED (SINCE DECEASED) NOW REPRESENTED
THROUGH LR. MR. ASAD MASROORPetitioner
Through: Mr. R.Y. Kalia, Adv.

versus

IQBAL SINGH & ORS.Respondents
Through: Mr. M. Salim, Mr. S. Salim, Adv. for
R-3 to 6

+ **C.R.P. 122/2025 & CM APPL. 24195/2025**

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THROUGH LR MR ASAD MASROORPetitioner
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CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 07.02.2025 passed by learned Principal District and Session Judge, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the



Applications under Order XXII Rule 3 of the CPC filed by the Petitioner and other Legal Representatives of the deceased (widow of the deceased Petitioner and three daughters) have been allowed by the learned Trial Court.

2. Learned Counsel for the Respondent 3 to 6 raises an objection on the maintainability of the present Petition. It is submitted that the present Petition is challenging an order passed under Order XII Rule 3 of the CPC, and the same is not amenable to challenge under Section 115 of the CPC in view of the proviso to Section 115 of the CPC. Reliance is placed on the judgment of the Supreme Court in the case of ***Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.***¹

2.1 It is further submitted that even on merits, the Impugned Order does not suffer from any infirmity since it is settled law that the learned Rent Controller cannot examine title disputes between the Parties.

3. Learned Counsel for the Petitioner, relying upon the judgment of the Supreme Court in the case of ***Mangluram Dewangan v. Surendra Singh & Ors***² submits that the appropriate remedy to challenge an order passed under Order XXII Rule 3 of the CPC would be a revision petition under Section 115 of the CPC, and thus this Petition is maintainable.

4. By the Impugned Order, learned Trial Court has allowed two Applications under Order XXII Rule 3 of CPC, which were filed by the Petitioner and other Legal Representatives of the deceased [widow of the deceased Petitioner and three daughters] in both the Appeals.

¹ (2003) 6 SCC 659

² (2011) 12 SCC 773



5. The Petitioner has relied on the **Mangluram Dewangan** case to submit that a revision is maintainable before this Court.

6. The Supreme Court in the **Mangluram Dewangan** case has discussed remedies that are available to an applicant whose application under Order XXII Rule 3 of the CPC has been rejected. The Court has held that if the order under challenge is neither a “decree” nor an appealable “order” enumerated in Section 104 or Order XLIII Rule 1 of CPC, a revision would lie under Section 115 of the CPC, if it satisfies the requirements of Section 115 of the CPC. It is apposite to set out the following extract of the **Mangluram Dewangan** case is below:

“11. We may next consider the remedies available to an applicant whose application under Order 22 Rule 3 of the Code, for being added as a party to the suit as legal representative of the deceased plaintiff, has been rejected. The normal remedies available under the Code whenever a civil court makes an order under the Code are as under:

(i) Where the order is a “decree” as defined under Section 2(2) of the Code, an appeal would lie under Section 96 of the Code (with a provision for a second appeal under Section 100 of the Code).

(ii) When the order is not a “decree”, but is an order which is one among those enumerated in Section 104 or Rule 1 of Order 43, an appeal would lie under Section 104 or under Section 104 read with Order 43 Rule 1 of the Code (without any provision for a second appeal).

(iii) If the order is neither a “decree”, nor an appealable “order” enumerated in Section 104 or Order 43 Rule 1, a revision would lie under Section 115 of the Code, if it satisfies the requirements of that section.

[Emphasis Supplied]

7. It is no longer *res integra* that the provisions of Section 115 of the CPC cannot be invoked except where an order, if made in favour of the revisionist, would have finally disposed of the suit or proceedings. This is set out in the proviso to Section 115 of the CPC below:

“Section 115 – Revision



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.

[Emphasis Supplied]

7.1 The Supreme Court in ***Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.***³ has held that unless the order is given in favour of the party applying for the revision would have given finality to the suit or other proceeding, a revision is not maintainable. The relevant extract of the ***Shiv Shakti*** case is set out below:

“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

³ (2003) 6 SCC 659



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.”

[Emphasis Supplied]

7.2 In the case of ***Gayatri Devi v. Shashi Pal Singh***⁴, the Supreme Court while relying on the ***Shiv Shakti Coop. Housing Society case*** has held that an order interim in nature or which does not finally decide the lis, cannot be challenged by way of a revision under Section 115 CPC.

“14. In the first place, it appears to us that the revision petition before the High Court was wholly incompetent in view of the amended provision of Section 115 CPC. The revision petition was entertained at the stage of interlocutory proceedings. As laid down by this Court in Shiv Shakti Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659] an order interim in nature or which does not finally decide the lis, cannot be challenged by way of a revision under Section 115 CPC.”

[Emphasis Supplied]

8. In the present case, the challenge raised by the Petitioner is to an Order allowing the Applications under Order XXII Rule 3 filed by other legal representatives of the deceased. This order does not finally dispose off the suit or proceedings and is thus not an order which is amenable to challenge under Section 115 of the CPC.

9. Learned Counsel for the Petitioner has laid emphasis on another paragraph of the ***Mangluram Dewangan*** case to submit that the Supreme Court has held that the remedy of any party who is aggrieved by an order under Order XXII Rule 3 of the CPC is to file a revision. Reliance is placed on paragraph 23 of the ***Mangluram Dewangan*** case, which is extracted below:

“23. As the order dated 31-8-1996 is neither a “decree” appealable

⁴ (2005) 5 SCC 527



under Section 96 of the Code nor an order appealable under Section 104 and Order 43 Rule 1, the remedy of the applicant under Order 22 Rule 3, is to file a revision. The High Court was therefore, right in its view that the adjudication of the question whether an applicant in an application under Order 22 Rule 3 was a legatee under a valid will executed by the deceased plaintiff in his favour, was not a decree and therefore the remedy of the applicant was to file a revision.”

[Emphasis Supplied]

9.1 Paragraph 23 of the **Mangluram Dewangan** case has to read along with paragraph 11 of the judgment, which clearly sets out that if an order is neither a decree nor an appealable order, a revision would lie, only if it satisfies requirements of the Section 115 of the CPC.

10. In view of the settled law as laid down in the **Shiv Shakti** case and **Gayatri Devi** case, a revision would not lie against an order which does not dispose of a case finally.

10.1 In any event, although the power of appeal and revision is not available, the Impugned Order can be challenged under the power of superintendence as is available under Article 227 of the Constitution of India. Article 227 of the Constitution of India reads as follows:

“227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:



Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

10.2 The Supreme Court in the case of ***Sadhana Lodh v. National Insurance Co. Ltd.***⁵, has clarified that the power of superintendence can be exercised in all cases where the provision for an appeal or revision is otherwise not provided for. The relevant extract of ***Sadhana Lodh*** case is reproduced below:

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see *National Insurance Co. Ltd. v. Nicolletta Rohtagi* [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788]). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. **Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.** As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus,

⁵ (2003) 3 SCC 524



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where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.”

[Emphasis Supplied]

10.3 The remedy of the Petitioner would thus lie in filing of a petition under Article 227 of the Constitution of India.

11. The present Petitions are accordingly dismissed. All pending Applications also stand closed.

12. However, liberty is granted to the Petitioner to agitate his grievance before the appropriate forum, *albeit* in accordance with law.

13. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 16, 2025/jn/r

[Click here to check corrigendum, if any](#)