



2025:DHC:4883



\$~41

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

%

Date of Decision: 22.05.2025

+

C.R.P. 237/2023 & CM APPL. 44475/2023**M/S KIRAN SALES CORP.**

.....Petitioner

Through: Mr. Anshul Sharma, Mr. Aadish Jain
& Mr. Chaaitanya Jain, Advocates.

versus

M/S GREENLINE LAMINATES PVT LTD & ORS.Respondents

Through: Mr. K.K. Pradhan, Advocate.

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"] seeking to challenge an order dated 21.07.2023 [hereinafter referred to as "Impugned Order"] passed by the learned ADJ-02, North West District, Rohini Court, Delhi during execution proceedings. By the Impugned Order, the Application under Section 151 of the CPC for cancellation of warrants of arrest as filed by the Petitioner/Judgment Debtor has been dismissed by the learned Trial Court.

2. Learned Counsel for the Petitioner submits that the Impugned Order is without merit and that the Application of the Petitioner under Order IX Rule 13 of the CPC was not dealt with by the learned Trial Court.

3. Learned Counsel for the Respondents, on the other hand, firstly submits that the Petition is not maintainable under the provisions of Section 115 of the CPC. He seeks to rely upon the proviso to Section 115 of the CPC to submit 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

Signature Not Verified

Digitally Signed By: JAI
NARAYAN
Signing Date: 03.06.2025
17:01:30**C.R.P. 237/2023****Page 1 of 6**



2025:DHC:4883



finally disposed of the suit or proceedings.

3.1 Learned Counsel for the Respondent also seeks to rely upon the judgment of the Supreme Court in ***Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.***¹ to submit that the present Petition is not maintainable.

4. Learned Counsel for the Respondent, secondly, submits on the merits of the case the learned Trial Court had passed the Impugned Order, relying on the report of the Bailiff, wherein it is stated that the Petitioner was served on more than one occasion but was avoiding service. Learned Counsel further submits that not only was the Petitioner served through his brother, the brother of the Petitioner also made two payments to the Respondent on that date of service itself. Reliance is placed on a bank statement of the Petitioner in this behalf, which is annexed as Annexure A1 to the Counter Affidavit filed on behalf of the Respondents and which references the payments from the number of the brother of the Petitioner, i.e., xxxxxx2355.

5. By the Impugned Order, an Application under Section 151 of CPC for cancellation of the Warrants of Arrest filed by the Petitioner (Judgement Debtor before the learned Trial Court) in the Execution proceedings has been dismissed by the learned Trial Court.

6. The maintainability of this Petition is a subject matter of challenge. The proviso to Section 115 of the CPC provides 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. Section 115 of the CPC is set out 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. The Supreme Court in the ***Shiv Shakti*** case 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 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]

7.1 In the case of ***Gayatri Devi & Ors v. Shashi Pal Singh***², the Supreme



2025:DHC:4883



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]

7.2 Concededly, the Impugned Order is an interim order in execution proceedings and is not an order which is amenable to challenge under Section 115 of the CPC.

8. Although the Petitioner was directed to place on record the Baillif report, the same has not been placed on record. However, the Court has examined the same as is available in the Trial Court Record annexed with the case file at PDF page No. 121 for the purposes of this Petition.

9. The report of the Bailiff of 06.05.2022 states that the Bailiff reached the premises and he found the elder brother of the Petitioner to be available at the premises. It further states that after a telephonic conversation with the Petitioner, the elder brother accepted summons. The report further states that at the time of the service, two payments were made to the Respondent, one for Rs.5,000/- in cash and one for Rs.25,000/- from the UPI No. of the brother of the Petitioner i.e., xxxxxx2355 via Paytm into the bank account of the authorised representative of the Respondent. The Report also contains the signatures of the brother of the Petitioner acknowledging the service.

10. The learned Trial Court has relied upon the report of the Bailiff dated 06.05.2022 to give a finding that the Petitioner, pursuant to issuance of



warrants of attachment, has paid Rs. 30,000/- to the Respondent. The contention of the Petitioner that the suit was decreed ex-parte and he did not receive any summons of the suit or the execution petition and thus, was not aware of the proceedings before the learned Trial Court is untenable given the facts. Thus, the contention of the Petitioner that Application under Order IX Rule 13, CPC has not been dealt with is without any merit.

11. The revisionary jurisdiction of this Court is limited. The Court is not required to examine the factual aspect of the matter, the Court only has power to see if the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested or has acted with illegal or material irregularity.

11.1 The Supreme Court in the case of *Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.*³; clarified that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

12. In view of what is stated above, this Court finds that the Impugned



2025:DHC:4883



Order does not require any interference by the Court.

13. The Petition is accordingly dismissed. The pending Application also stands closed.

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

TARA VITASTA GANJU, J

MAY 22, 2025/ ha/r

Click here to check corrigendum, if any