



2025:DHC:4887



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 30.05.2025***+ **C.R.P. 176/2025**

YOGENDER KUMAR GUPTA

.....Petitioner

Through: Mr. Anjani Kumar Singh, Advocate.

versus

ARUN KUMAR GUPTA

.....Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CM APPL. 35026/2025 [*Exemption from filing certified copies*]**

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

CM APPL. 35027/2025 [*Delay in filing Appeal*]

3. This is an Application seeking condonation of delay of 128 days in filing the present Appeal.
4. For the reasons as stated in the Application, the delay is condoned.
5. The Application stands disposed of.

C.R.P. 176/2025 & CM APPL. 35025/2025 [*Stay*]

6. The present Petition has been filed under Order XLI read with provisions of Order XXI, Rule 58 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to challenge the order dated



19.12.2024 passed by the learned District Judge-01, North East District, Karkardooma Courts, Delhi [hereinafter referred to as “Impugned Order”].

6.1. The matter was listed before a Coordinate Bench of this Court on 29.05.2025. On that day, a statement was made by the Petitioner that due to an oversight of Counsel an Appeal under Order XLI read with provisions of Order XXI, Rule 58, CPC has been filed, however, a Revision Petition would be maintainable against the Impugned Order. The Coordinate Bench directed the Registry to register the Appeal as a Revision Petition and list the matter before the Roster Bench.

7. Learned Counsel for the Petitioner submits that the Petitioner had earlier wrongly filed an Appeal. Hence, there is a delay in filing the present Petition. However, no Application under Section 14 of the Limitation Act, 1962 has been filed by the Petitioner.

8. The record also shows otherwise. The Impugned Order was passed on 19.12.2024 and this Petition was filed on 28.05.2025 and listed on 29.05.2025. Concededly, this Petition has been filed beyond the period of limitation.

9. Learned Counsel for the Petitioner reiterates his contention that a Revision Petition is maintainable before this Court.

10. The proviso to Section 115, CPC provides that no revision shall be filed against a matter which does not finally dispose of the matter. This is extracted 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]

10.1 The Supreme Court in ***Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.***¹ has held that unless the order if 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

¹ (2003) 6 SCC 659



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]

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

11. By the Impugned Order, the learned Trial Court has passed the following directions:

- (i) Firstly, that an Affidavit of assets and a valuation report is to be filed.
- (ii) Secondly, the Application for waiver of costs imposed on the Petitioner is dismissed as no ground is made for waiver of costs.

12. Undisputedly, the Impugned Order is not an order which is amenable to challenge under Section 115 of the CPC.

13. In any event, as stated above, the Petition is barred by limitation.

14. The Petition is accordingly dismissed. The pending Application stands closed.

² (2005) 5 SCC 527



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14.1 However, liberty is granted to the Petitioner to take appropriate steps for redressal of his grievances in accordance with law.

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

TARA VITASTA GANJU, J

MAY 30, 2025/pa/r