



2025:DHC:6671



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

Date of Decision: 09.07.2025

+ **C.R.P. 239/2018, CM APPL. 46923/2018, CM APPL. 46924/2018,
CM APPL. 9347/2020, CM APPL. 37068/2023**

TAPAN KUMAR GHOSH

.....Petitioner

Through: Mr. Ritesh Kumar Chowdhary,
Advocate.

versus

ANIMA DEB & ORS.

.....Respondents

Through: Ms. Namita Roy, Ms. Gopa Biswas,
Adv. for R-1 & R-3

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed by the Petitioner under Section 115 of Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] seeking to challenge an order dated 12.01.2018 passed by Ld. ADJ-02, South East, Saket Courts, New Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, an Application under Section 247 of the Indian Succession Act, 1925 [hereinafter referred to as 'IS Act'] read with Order XL Rule 1 of the CPC and Section 151 of the CPC filed by the Petitioner (Respondent No.2 before the learned Trial Court) seeking appointment of Administrator has been dismissed.

2. The learned Trial Court has however directed that the Respondent No.1 (Petitioner before the learned Trial Court) shall be entitled henceforth,



to file statement of accounts with regard to the rent received in the following terms:

“35. In view of my aforesaid discussion, I am of the view that application filed by applicant is without merits and deserves dismissal and is accordingly dismissed.

36. However, in order to maintain transparency, it is directed that petitioner shall henceforth file statement of accounts with regard to rent received by her qua different portions of suit property and expenses incurred by her on various counts with supporting affidavit.”

3. A question of maintainability has arisen in the present Petition.
4. Learned Counsel for the Respondent Nos.1 and 3 submits that in terms of the provisions of Section 299 of the IS Act, an order of this nature is an appealable order and a revision is not maintainable.
5. Learned Counsel for the Petitioner makes three submissions. Firstly, learned Counsel submits that the Petition is maintainable under Section 115(2) of the CPC. Secondly, it is contended that even if a revision petition has been filed, the same can be *suo moto* converted into an Appeal. Lastly, it is contended that the Petition is pending for so long and hence, the Court should examine this matter. In support of his contentions, learned Counsel for the Petitioner seeks to rely upon the judgment of the Guwahati High Court in ***Keshav Mohan & Anr vs. State of Assam***¹ and ***Deepa Newar vs. Deepak Borthakur and Anr***² and judgment of the Division Bench of the Madhya Pradesh High Court in ***Omprakash and Ors vs. Dwarka Prasad and Anr***³ to submit that the power of *suo moto* conversion lies with the High Court.

¹ (1991) 2 Gau LR 192

² (2017) 3 Gau LR 295

³ 2004 SCC OnLine MP 293



6. Learned Counsel for the Respondent, on the other hand, reiterates her contentions that the Petition is not maintainable.

7. The brief relevant facts are that a Petition for grant of probate/letters of administration of the will dated 23.04.2007 of late Shri J.N. Ghosh was filed by his wife under Sections 276 and 278 of the IS Act. Late Shri J.N. Ghosh left behind, including his wife, six legal heirs being three sons and two daughters. Disputes arose *inter se* the legal representatives which led to the filing of the present petition. During these proceedings, an application under Section 247 of the IS Act was filed by the Petitioner (Respondent No.2 before the learned Trial Court). During the pendency of the probate petition, the Petitioner passed away and one of the daughters was substituted as the Petitioner. The challenge in the present Revision Petition is to an order that was passed in an interim application filed.

8. Since, an issue has been raised on the maintainability of the present Petition, it is apposite to set out Section 115 of the CPC which reads as below:

“Section 115 – Revision

(1) 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]



8.1 The proviso to Section 115(1) of the CPC states that the provisions of Section 115 of the CPC shall not be exercised unless the order gives finality to the *lis* pending between the parties.

9. Concededly, the Impugned Order is not an order which gives finality to these proceedings. In fact, as is stated above, the learned Trial Court has passed directions for maintaining transparency, by directing the Petitioner to file a statement of accounts. The relevant extract of the Impugned Order is set out below:

“35. In view of my aforesaid discussion, I am of the view that application filed by applicant is without merits and deserves dismissal and is accordingly dismissed.

*36. However, in order to maintain transparency, **it is directed that petitioner shall henceforth file statement of accounts with regard to rent received by her qua different portions of suit property and expenses incurred by her on various counts with supporting affidavit.**”*

[Emphasis Supplied]

10. The contention of the learned Counsel for the Petitioner that the present Petition is maintainable under Section 115(2) of the CPC is also misconceived. Section 115(2) of the CPC provides that the High Court shall not vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto. Thus, this provision provides that where an appeal lies either to the High Court or to any subordinate Court, such an order will not be reversed under revisionary jurisdiction, in the following terms:

“Section 115 – Revision

(1)...

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any



Court subordinate thereto.”

11. It is the case of the Respondents that the Petition is barred in view of Section 299 of the IS Act and only an Appeal is maintainable. It is apposite to set out Section 299 of the IS Act below:

“299. Appeals from orders of District Judge.—Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals.”

11.1 Section 299 of the IS Act provides for an appeal against an order under Section 247 of the IS Act. It is settled law that where an appeal is provided for, no other remedy shall be exercised. The Supreme Court in the case of ***Sadhana Lodh v. National Insurance Co. Ltd. & Anr.***⁴ has held that where a statutory remedy of appeal exists, the Appellant cannot bypass it by filing a petition under Articles 226/227 of the Constitution. The High Court erred in entertaining such a petition, and its judgment was accordingly set aside. The relevant extract of ***Sadhana Lodh*** case is set out 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

⁴ (2003) 3 SCC 524



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, 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.”

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8. For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.”

[Emphasis Supplied]

12. The Impugned Order is an order disposing of an application seeking appointment of an administrator pendente lite. The learned Trial Court has found that since the applicant in its Written Statement raised a doubt on the genuineness of the will of his father relied upon by the Petitioner, no opinion can be expressed with regard to the genuineness of the will of the parties without leading evidence. In addition, it has been held that the allegations levelled are yet to be proved by evidence. A similar finding has been given with regard to the signatures on the will and those of the attesting witnesses.

13. The learned Trial Court has held that the parties are required to lead on the issues raised, including those in the Application under Section 247 filed. This finding is amenable to challenge by an Appeal in terms of Section



299 of the IS Act alone.

13.1 The Supreme Court in ***Subal Paul v. Malina Paul & Anr.***,⁵ has held that the scope of orders appealable under Section 299 of the Indian Succession Act is wide, and that right of Appeal is under the provisions of Section 299 of the IS Act and is subject only to some inherent limitations. It is apposite to set out the relevant extract below:

*“10. The provisions referred to hereinbefore clearly go to show that **although the contentious proceedings would not be treated as regular suit or upon determination of the issues raised therein a decree is not to follow the judgment but procedural provisions of the Code of Civil Procedure would be applicable.** The words “in accordance with the provisions of the Code of Civil Procedure, 1908” occurring in Section 299 of the Act, therefore, do not refer to any substantive rights of the parties but merely procedural part thereof.*

11. A right of appeal of a party in a contentious proceeding is, therefore, to be found in the provisions of Section 299 of the Act itself and not in Section 104 of the Code of Civil Procedure.

12. Section 299 of the Act states that all orders passed by the District Judge are appealable. Although ex facie, all orders are appealable ones, however, the decisions rendered in various jurisdictions point out the inherent limitations contained therein.”

[Emphasis Supplied]

13.2 A Division Bench of the Delhi High Court in ***G.S. Nayyar v. Kaushalya Rani & Ors.***⁶ discussed the breadth of decisions appealable under Section 299 of the Indian Succession Act. It was held that the Act is a complete code and makes special provision for the matters it deals with. It is apposite to set out the relevant extract below:

“We have heard the counsel for the parties at some length. The appeal really lies under section 299 of the Act which reads as follows:—

“Every order made by a District Judge by virtue of the power hereby

⁵ (2003) 10 SCC 361

⁶ 1973 SCC OnLine Del 239



conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.”

Section 295 of the Act provides that in any case before the District Judge in which there is a contention, every proceeding shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant, shall be the defendant. **The proceedings before the District Judge, however, do not originate by a plaint, but they are initiated by a petition as provided by section 272 and 278 (or section 276 in other cases) of the Act.** Section 272 of the Act provides that probate and letters of administration may be granted upon an application for that purpose by a petition verified as provided. Section 278 prescribes the contents of the petition to be filed. Section 277, 280 and 281 require additional information and make special provisions. Section 283 makes further provisions for the procedure to be followed and Section 290 provides that where it appears to the District Judge * * * * that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VII. Schedule VII gives the form of the letters of administration.

From a perusal of the above-mentioned provisions of law it would appear that the Act purports to be a complete Code by itself and makes special provisions for the matters dealt with by it. Section 295 provides that where there be contentious proceedings, they shall take, as nearly as may be, the form of a regular suit in which the petitioner would be treated as plaintiff and the opposite party as defendant. This provision only prescribes the rule of procedure as does section 141 of the Code of Civil Procedure. An interesting analogy would be found in section 20 of the Indian Arbitration Act, 1940 where an application for filing an arbitration agreement and appointment of an Arbitrator is directed to be in writing and to be numbered and registered as a suit between one or more of the parties interested as plaintiffs and remainder as defendants. These proceedings, however, do not result in a decree.

The aforesaid authorities support us in the view that the proceedings under the Succession Act do not constitute a suit nor is a decision given in them a decree within the meaning of definition given in the Code. The learned counsel for the appellant, who is the opposite party in the application, invited our attention to section 54 of the Land Acquisition Act, 1894 and be relied upon a decision of the High Court of Gujarat in *Bai Lalita v. Shardaben*, A.I.R. 1970 Gujarat 37 (7). The relevant provisions of the Land Acquisition Act on the subject are different from the provisions of the Indian Succession Act. Section 26(2) of the Land Acquisition Act lays



down that every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9) respectively of the Code of Civil Procedure. Section 54 of the said Act provides that subject to the provisions of the Code applicable to appeals from original decrees and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court or from any part of the award, of the Court * * * *. The statutory provision, therefore, by a fiction of the law, has constituted the award of the District Court given under the Land Acquisition Act to be a decree and an appeal against the same will, therefore, rightly be classed as an appeal from a decree. In fact the practice in this Court has been to register appeals from awards as regular first appeals from decrees and the court-fees has been levied ad valorem in accordance with Article 1 of Schedule I of the Court Fees Act. The reason for this practice is found in the provisions of the Land Acquisition Act which make the award a deemed decree. No irregularity or illegality, therefore, attaches to the said practice. However, under the provisions of the Indian Succession Act, we do not find any such words which make the decision of the District Judge a decree or an appeal against his decision as an appeal from a decree. On the other hand, section 299 itself speaks of every order of the District Judge and we assume that the Legislature was well aware of the distinction between the expression “every order” and “every decree” and it had deliberately used the distinct word “order” and not a decree in this provision of law. There is, therefore, no justification for construing the expression in section 299 as a decree passed in a suit. We are, therefore, of the conclusion that the proceedings under the Indian Succession Act do not constitute a suit and the decisions on the petitions and applications therein are not included within the definition of decree given in section 2(2) of the Code either by any express provision or by any necessary intendment. The appeal under section 299 of the Succession Act, therefore, does not lie as an appeal from a decree under section 96 of the Code.”

[Emphasis supplied]

14. The only other contention that has been vociferously argued before this Court is that of the power of *suo moto* conversion by the Court. Learned Counsel submits that this Review Petition should be *suo moto* converted to an Appeal. In support of his contentions, learned Counsel for the Petitioner has placed reliance on the judgments as set out below. Each of these judgments are distinguishable and do not aid the Petitioner.



14.1 In the *Deepa Newar* case, the judgment was passed on an application seeking conversion of the revision petition to an Appeal by exercising inherent jurisdiction. In the facts of this case, the Court deemed it apposite to pass orders in this Application. The relevant extract of *Deepa Newar* case is set out below:

“10) In the present case in hand, the applicant had first filed RSA 11/2016 to challenge both the judgments and decrees impugned in the revision connected to the present application. The same was withdrawn to file the connected revision. As per the statements made and documents annexed to the additional affidavit dated 08.12.2016, the applicant has explained the reason why they were misled to believe that a revision and not the appeal would be maintainable. However, having now taken a view that a second appeal was maintainable, the present application has been filed to convert the revision into appeal. In this regard, this court is of the view that the decision whether an appeal is to be filed or a revision ought to be filed, are based on legal advice received by the applicant by his advocates, and no litigant is expected to know the legal principles and procedure connected to filing of appeals and revision. The earlier appeal was allowed to be withdrawn by this court to enable the applicant to file a revision. Therefore, the withdrawal of the appeal cannot attract the principles of res-judicata so as to bar the entertaining of a second appeal, if this court permits the conversion of the revision into an appeal, as prayed for.

11) In the present case in hand, the applicant is challenging both the judgment and decree passed by the learned courts below and the manner in which it is to be challenged is nothing but a procedural law. This court is of the view that the procedural law is supposed to be a hand-maid of justice. However, it is made clear that in the present case in hand, this court has not adjudicated whether the judgments which are impugned in the connected civil revision petition are appealable or a revision would lie as these are issues, which are required to be decided at the stage of admission and, if the said matter is decided at this stage, it may cause prejudice either of the parties to this lis and, as such, this order is being passed on the basis of the prayer made by the applicant, without adjudicating on merit of maintainability of appeal or revision, as the case may be.

12) This court is of the considered view that for ends of justice, the applicant be and is hereby permitted to convert the connected CRP No. 170/16 into a Memorandum of Appeal. The applicant is required to pay the applicable court fees. If the same is done within a period of one month from today, the second appeal may be registered and placed before the appropriate Bench for admission on substantial questions of law. If no



such court fees is paid, the CRP No. 170/16 will stand dismissed with costs, hearing fees for Advocate for the Opp. Party is assessed at Rs.5,000/-. On such dismissal as indicated above becoming effective, the LCR be returned.”

[Emphasis Supplied]

14.2 A similar view was taken by the Division Bench of the Madhya Pradesh High Court in ***Omprakash*** case wherein an Application was filed for conversion of revision into a miscellaneous appeal.

15. Clearly, there is no application for conversion filed by the Petitioner before this Court to exercise this remedy.

16. So far as concerns the judgment in the ***Keshav Mohan*** case, the judgment has been passed in a Petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of an FIR and is clearly inapplicable. The learned Single Judge of the Guwahati High Court has held that conversion in exercise of the inherent powers has to be within defined limits guided by rules of reason. It has further been held that a civil appeal may be converted to a civil revision or vice versa but not a civil proceeding to a criminal proceeding. The relevant extract of the ***Keshav Mohan*** case is set out below:

“4. Conversion may be made in exercise of the inherent powers of the Court. But the exercise of that power must be within clearly defined limits guided by rules of reason. In my judgment, the original proceeding and the converted proceeding must be of the same sort or type of legal proceeding, and the Court converting the proceeding must have the jurisdiction to hear the converted proceeding. Thus, a civil appeal can be converted to a civil revision or vice versa; but, not a civil proceeding to a criminal proceeding. Let me now state the reasons. Civil appeal and revision are regulated by the Code of Civil Procedure. In *Shankar v. Krishnaji*, (1969) 2 SCC 74: AIR 1970 SC 1, the Supreme Court has held:

“Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of High



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Court as a superior Court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the ap-pellate jurisdiction of the High Court which is being invoiced and exercised in a wider and larger sense."

[Emphasis Supplied]

17. The substantive Application that has been filed by the Petitioner before the learned Trial Court is an Application under Section 247 of the IS Act for the appointment of Administrator pendente lite for management of the suit property and collection of the monthly rent and preservation thereof. The Application has been disposed of with an order directing the Petitioner to file a statement of accounts in respect of the suit property. The order requires the Petitioner to set out details of expenditure as well as the monthly rentals received. Thus and in any event, the prayers of the Petitioner are partially satisfied.

18. In view of the foregoing discussions, the present Petition is dismissed. All pending Applications stand closed.

19. The Petitioner is however at liberty to take appropriate steps in accordance with law, that are available for redressal of his grievances.

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

TARA VITASTA GANJU, J

JULY 9, 2025/pa