

JPD-21
Ct No.07
16.06.2026
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 129 of 2024

Sri Om Prakash Chandak
Vs.
Smt. Dulali Chaki and others

Mr. Bhaskar Roy Mahasaya,
Ms. Taniya Bhowmik

.... for the petitioner

Mr. Sudipta Majumdar, Sr. Adv.,
Mr. Satyaki Basu

....for the opposite parties

1. The present challenge has been preferred against an order whereby the learned Additional District Judge, Mekhliganj, Cooch Behar has dismissed a revisional application filed under Section 115 of the Code of Civil Procedure on the ground that the same is not maintainable.
2. The said revisional application was, in turn, preferred against an order whereby the Executing Court dismissed an execution case filed by the present petitioner on the ground of limitation.
3. Learned counsel for the petitioner seeks to argue on the merits of the parent order passed by the Executing Court, in view of the revisional Court, while dismissing the revisional application on the ground of maintainability, having referred to the merits of the said case as well. In such context,

learned counsel seeks to rely on certain judgments of the Hon'ble Supreme Court and impress upon the Court that the principle, that when an appeal is preferred against a decree, the decree is jeopardized and the period of pendency of the appeal is to be deducted while calculating limitation, should be imported in case a challenge is preferred to the decree by separate suits as well.

4. On the other hand, the learned Senior Advocate appearing for the opposite parties submits that such argument is misplaced, since the principle that an appeal is a continuation of the suit is not applicable in case separate suits are filed challenging a decree passed in a suit. It is contended by the opposite parties that a common thread has to run between the suit and the appeal in order for the said principle to be applicable. In any event, it is argued that the period of limitation is not arrested merely due to pendency of different suits challenging a decree.
5. Be that as it may, upon hearing learned counsel for the parties, it transpires that the learned Additional District Judge did not commit any jurisdictional error or error of law in holding that the revisional application was not maintainable. The learned Additional District Judge took into consideration the amended Section 115 of the Code of Civil Procedure which permits a revisional

application under the said provision and/or under Section 115A of the Code (West Bengal Amendment) which permits a District Court to take up a revision, only when the impugned order, if passed in favour of the revisionist petitioner, would have finally decided the suit or proceeding from which the same arises.

6. Since, if the order of the Executing Court was passed in favour of the revisionist petitioner, holding the execution case to be maintainable, the same would not have finally decided the execution case but rather reopened it, the learned Additional District Judge was perfectly justified in holding that the provisions of Section 115 or Section 115A of the Code of Civil Procedure are not attracted in the instant case.
7. Hence, this Court does not find any illegality in the conclusion of the impugned order passed by the learned Additional District Judge.
8. However, the learned Additional District Judge should have stopped short of going any further after having observed that the revisional application was not maintainable. Instead of doing so, the learned Additional District Judge also made certain observations and came to certain findings as to the merits of the order impugned in the revisional application as well.

9. Insofar as the said exercise is concerned, the learned Additional District Judge transgressed his jurisdiction in doing so.
10. Thus, although this Court is not inclined to interfere with the order of the learned Additional District Judge in view of the conclusion thereof being correct, in the same breath, this Court is of the opinion that the extraneous observations and findings made by the learned Additional District Judge in the impugned order, to the extent that the merits of the order impugned before the revisional Court were concerned, are tentative in nature and not binding in any manner at any further stage of the proceeding or in any other challenge, if preferred by the revisionist petitioner herein against the parent order of the Executing Court.
11. Thus, nothing in the impugned order shall preclude the petitioner from preferring a challenge against the parent order of the Executing Court subject, of course, to the Court considering whether such a challenge under Article 227 of the Constitution of India against the parent order of the Executing Court would be otherwise maintainable in law, particularly, in view of the delay in filing the same.
12. Be that as it may, it would be premature to express a final opinion thereon.

13. With the aforesaid observations, CO 129 of 2024 is disposed of without interfering with the impugned order dated November 10, 2022 passed by the learned Additional District Judge, Mekhliganj, Cooch Behar in Civil Revision No.18 of 2017, however, with the above observation that the findings arrived at therein on the merits of the matter are tentative in nature and shall not be binding at any other stage of the proceeding or in any other proceeding between the parties.
14. There will be no order as to costs.
15. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)