

Nagawwa Vs. Mallappa

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Court : Karnataka

Decided On : Mar-15-2004

Reported in : ILR2004KAR1594; 2004(3)KarLJ1

Judge : N.K. Jain, C.J. and ;V.G. Sabhahit, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 115(1); Code of Civil Procedure (CPC) (Amendment) Act, 1999

Appeal No. : Civil Revision Petition No. 2136 of 2003

Appellant : Nagawwa

Respondent : Mallappa

Advocate for Pet/Ap. : V.R. Datar, Adv.

Judgement :

ORDER

N.K. Jain, C.J.

1. The defendant-petitioner has filed this petition against the order dated 5-4-2003 passed on I.A. No. 18 in O.S. No. 94 of 1997. The defendant-petitioner had disputed the signature of her husband on the Will and as such she had moved I.A. No. 18 under Order 26, Rule 10-A of the Civil Procedure Code seeking to appoint a Handwriting expert to give opinion about the signature of her husband. The Trial

Court rejected the same.

2. The learned Single Judge while considering the revision petition found that the decision of this Court in *Smt. Meenakshamma v. Munivenkatappa* 2004(1) Kar. L.J. 267 : ILR 2003 Kar. 2758 and the decision of the Apex Court in *Shiv Shakti Co-operative Housing Society, Nagpur v. Swaraj Developers and Ors.*, : [2003]3SCR762 had expressed different views, and therefore, referred the matter to a Division Bench on the question of maintainability of the revision petition against the interlocutory orders and as to whether, in view of the amendment of Section 115 of the CPC, deleting Clause (b) of the proviso and inserting new proviso to the effect that a revision lies only if the order if so varied or reversed would finally dispose of the suit or other proceeding, revision lies against an order which would not finally dispose of the suit or other proceedings. The reference is placed before us as per the order dated 13-2-2004.

3. In view of the recent amendment of Section 115 of the CPC, by Amendment Act, 1999 which came into force from 1-7-2002, the revisional powers of this Court are curtailed and can be exercised only if the order passed on interlocutory applications would result in final disposal of the suit itself and not otherwise. Interlocutory orders, which do not finally decide the suit, or other proceedings cannot be the subject-matter of revision under Section 115 of the CPC. The Apex Court has considered this issue in its decision in *Shiv Shakti's case*, supra. The scope of the amendment of Section 115 of the CPC was considered by the Apex Court in the case of *Surya Dev Rai v. Ram Chander Rai and Ors.*, : AIR 2003 SC3044 wherein their Lordships observed that revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied.

4. The learned Counsel for the petitioner does not dispute the settled legal position but submits that even after insertion of the proviso by the Amendment Act, a revision can be entertained under Section 115 of the CPC where grave injustice has been caused. In support of his argument, he has relied on the decision of the Supreme Court in *Hindustan Petroleum Corporation Limited v. Pinkcity Midway Petroleums*. AIR 2008 SC 2881 : (2003)6 SCC 508 In that case their Lordships while considering the question whether revision is maintainable, on the facts of the

case, have come to the conclusion that the Civil Court had no jurisdiction to entertain a suit after an application under Section 8 of the Arbitration and Conciliation Act was made for arbitration and are of the opinion that the Trial Court erred when it rejected the application of the appellant filed under Sections 8 and 5 of the Act. Learned Counsel also submits that their Lordships, in the said case, have interfered with the order of the High Court and have held that the High Court erred in refusing to grant relief to the appellant and dismissing the revision petition. The case relied on by the learned Counsel is not helpful to the facts of the given case as the Supreme Court was considering an order on an application to refer the case for arbitration which would finally dispose of the suit or other proceeding. Further, in the instant case, the passing of the impugned order has not been shown to have resulted in injustice or failure of justice. A reference can be made of the relevant para of Shiv Shakti's case, supra:

'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 of 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'.

Also reference can be made to the relevant para in Surya Dev Rai's case, supra, which goes as follows:

'The effect of the erstwhile Clause (b) of the proviso, being deleted and a new proviso having been inserted, is that the revisional jurisdiction, in respect of an interlocutory order passed in a trial or other proceedings, is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied'.

A Division Bench of this Court has considered the above two cases in detail in its decision rendered in K.M. Aliulla Khan v. R. Sarvesh Murthy, W.A. No. 824 of 2004, DD:12.2.2004 and has come to the conclusion that a writ petition can only

be entertained if the impugned order has caused grave injustice or failure of justice. In any view of the matter, we are of the opinion that a revision petition is maintainable only if the order passed on an interlocutory application would finally decide the suit or other proceedings and not otherwise.

5. It is clear from the perusal of the decision of the learned Single Judge of this Court in Smt. Meenakshamma's case, supra, that in the said revision petition filed under Section 115 of the CPC, the interim order passed by the Trial Court allowing an application filed by the plaintiff has been dismissed holding that no prejudice would be caused to the revision petitioner and the learned Single Judge has also observed that in view of Amendment of Section 115 of the CPC, by CPC (Amendment) Act, 2002, it is essential for the petitioner to show that by result of the order in revision the suit or other proceeding would be finally disposed of. However, while considering as to what is a 'proceeding' the learned Single Judge relying upon the decision of the Supreme Court in *Madhu Limaye v. State of Maharashtra*, : 1978 CriLJ165 wherein provisions of Section 397 of the Criminal Procedure Code were considered with reference to interlocutory orders referred to therein, and the decision of the Supreme Court in *Baldevdas Shivilal and Anr. v. Filmistan Distributors (India) Private Limited and Ors.*, : [1970]1SCR435 wherein the Supreme Court was considering the meaning of the work 'case' in Section 115 of the CPC, and without considering the decision of the Supreme Court in *Shiv Shakti Co-operative Society's case*, supra, wherein effect of amendment of Section 115 of the CPC, by Amendment Act, 2002 has been specifically considered, the learned Single Judge has made certain observations. Merely considering Section 397 of the Cr. P.C., which has no material relevance to the provisions of Section 115 of the CPC. Under the circumstances and in the facts of the given case, while dismissing the revision the learned Single Judge has made some observations, in Smt. Meenakshamma's case, supra, which are not justified and are contrary to the decision of the Apex Court in the above referred cases dealing with the scope of revisional jurisdiction under Section 115 of the CPC, after amendment in 2002.

6. The learned Single Judge in Smt. Meenakshamma's case, supra, also has observed that certain category of applications filed in the suit are termed as

interlocutory applications and the orders thereon are termed as interim orders, but in real sense they are intermediary proceedings, in other words, subordinate and auxiliary to main proceedings. To illustrate, an application under Order 39, Rules 1 and 2 of the CPC regarding grant of temporary injunctions and application for appointment of receiver under Order 40 of the CPC, although for procedural convenience titled as interlocutory applications, will have a material bearing on the subject-matter and rights of the parties. Such questions would not be relevant at the time of final adjudication. The learned Single Judge has further observed in paras 9 and 10 as follows:

'9. The provisions under Order 26, Rule 9 for appointment of Commissioner, an application under Order 6, Rule 17 for amending the pleadings and an application under Order 1, Rule 10 for impleading the parties, an application to summon the witnesses or documents are also termed as interlocutory applications, any wrong order in that regard by the Trial Court will have a material bearing on the final result. The party aggrieved if denied the right of revision has to get the order corrected only in appeal and many a time it may result in unnecessary remand. It is a flawed logic to assume that curbing the revision at any cost would solve the problem of delayed disposal.

10. Therefore, in the light of the ratio laid down by the Supreme Court, it is to be held that in all the subordinate proceedings arising in a suit by way of interlocutory application where the rights of the parties are to be adjudicated and if such adjudication results in final conclusion of such rights and if the said questions involved in the adjudication of rights in such proceedings do not arise for consideration at the time of final disposal of the suit, necessarily such of the subordinate proceedings should be construed to come within the purview of the phrase 'other proceedings' and in respect of such the orders, a revision would lie. As observed above, the orders passed under Order 39, Rules 1 and 2, under Order 40, under Order 26, Rule 9, under Order 6, Rule 17, under Order 13-related production of document, under Order 16-related summoning of witnesses and under Order 18-to reopen the case and to recall the witnesses have the character of an independent subordinate proceedings arising in a suit, not relatable to the question that arise for final adjudication in the suit and any orders thereon in

revision would finally conclude the rights of the parties in such proceedings. Therefore a revision would lie'.

7. The observations made by the learned Single Judge in Smt. Meenakshamma's case, supra, as stated, is contrary to the observations made by the Supreme Court in Shiv Shakti Co-operative Society's case, supra, and the same has not been considered by the learned Single Judge. The learned Single Judge has also overlooked the facts that the CPC, provides for appeal against orders in the nature of subordinate or auxiliary proceedings like order passed on application for temporary-injunction under Order 39, Rules 1 and 2 and application for appointment of receiver filed under Order 40 and other proceedings. It is also clear from the decision of the Supreme Court in Shiv Shakti Co-operative Society's case, supra, that the Supreme Court after considering the provisions of Section 104 of the CPC, as also the provisions of Order 43 and other provisions has categorically held that no revision would lie against the order which is interim in nature or does not finally decide the lis. In the subsequent decision in Surya Dev Rai's case, also the Supreme Court has clearly held that revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied as referred to above and therefore, the observations made by the learned Single Judge in Smt. Meenakshamma's case, supra, regarding maintainability of revision against certain orders passed in the suit are contrary to the decision of the Supreme Court as stated above and are uncalled for. Therefore, the observations made in that case stand overruled.

8. Accordingly, we answer the question referred to us by holding that in view of the provisions of Section 115 of the CPC, as amended by 1999 Amendment Act, no revision would lie against an order which would not finally dispose of the suit or other proceedings.

Post the civil revision petition for hearing before the appropriate Bench.