

Anil Kumar and Another Vs. Sri Chandra Shekhar Azad University, Kanpur and Others

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Court : Allahabad

Decided On : Mar-20-2001

Reported in : 2001(2)AWC1382

Judge : B.K. Rathi, J.

Acts : [Constitution of India](#) - Articles 226 and 227; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : Civil Revision No. 26 of 2001

Appellant : Anil Kumar and Another

Respondent : Sri Chandra Shekhar Azad University, Kanpur and Others

Advocate for Pet/Ap. : Rajiv Gupta, Adv.

Judgement :

B.K. Rathi, J.

1. This revision has been preferred against the order passed in Misc. Appeal No. 113 of 2000 by which the matter has been remanded for re-decision of application 6C. The Stamp Reporter has reported that In view of the decision of Full Bench of this Court in the case of Jupiter Chit Fund (Pvt.) Ltd. v. Dwarka Diesh Dayal and

others. AIR 1979 All 218, the revision is not maintainable.

2. I have heard Sri Rajiv Gupta, learned counsel for the revisionists.

3. The learned counsel has referred to the decision of Hon'ble D. K. Seth. J. dated 21.12.1999 passed in Civil Revision No. 540 of 1999. In this case, the above decision of the Full Bench was distinguished and it was observed that the revision against the order passed in the exercise of revisional jurisdiction by the court below is not maintainable. That the power of this Court under Article 227 of the [Constitution of India](#) has no relevance with regards to the words 'case arising out of the original suit' as used in Section 115, C.P.C. as it is a constitutional remedy. Therefore, in similar circumstances Hon'ble D. K. Seth, J., has held that the revision is maintainable.

4. I have gone through the judgment of Hon'ble D. K. Seth. J., and the decision of the Full Bench of this Court. The ratio of the decision of Full Bench of this Court has been mentioned in para 23 of the judgment, which reads as follows :

'23. It is settled law that a judicial order passed by the trial court merges in the order passed by the appellate or revisional court ; Shankar Ramchandra v. Krishnaji Dattatraya, AIR 1970 SC 1. How can it be said that an appellate or revisional decision in which the decision of the trial court has merged, is still a case arising out of the original suit. After merger, that case. i.e.. the decision arising out of the original suit vanishes. The decision of the appeal or revision brings into existence a case which can properly be said to be arising out of the appeal or revision. The decision of an appeal or revision is hence not amenable to the revisional jurisdiction under Section 115 even after the amendment in 1973.'

5. On the perusal of the judgment of the Full Bench, the distinction which has drawn by Hon'ble D. K. Seth. J., is available in writs filed under Articles 226 and 227 of the [Constitution of India](#). The revision under Section 115, C.P.C. does not lie against such order by mentioning Article 227 also. The present revision is under Section 115, C.P.C. and is not a writ petition under Articles 226/227 of the [Constitution of India](#). The finding of Hon'ble D. K. Seth. J.. in the above matter is correct that the writ petition under Articles 226/227 of the [Constitution of India](#) is

maintainable. However, this revision is not maintainable.

6. Sri Rajiv Gupta at the end has argued that in case it is found that the revision is not maintainable, he may be permitted to file a writ petition against the order.

7. In view of the above, the revision is disposed of finally with the direction that the applicants are at liberty to file a writ petition against the impugned order. For that purpose the certified copies filed in this case may be returned to the learned counsel.

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