

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Civil Revision No. 12/2020
Abdul Ghafoor Abbasi
Vs
Tahira Abbasi

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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13.03.2020 Mr. Arif Chaudhry learned ASC for petitioner,
 Malik Mumtaz Advocate for respondent.

Learned counsel for respondent, at the very outset, objected upon maintainability of the instant civil revision petition on the ground that remedy provided in terms of Section 115 CPC in recently promulgated enactment i.e. the Civil Procedure Code (Amendment) Act, 2020; that even at the time when the instant civil revision petition was filed, the Civil Procedure Code (Amendment) Ordinance 2019 had been in force that also excludes application under section 115 CPC.

2. Learned counsel for the petitioner states that the enactment, referred to above, retains no clause regarding its retrospective effect and, therefore, instant civil revision petition is maintainable. Further contends that even otherwise, the revision petition can be converted into writ petition under the principle that no one can be left remediless. Learned counsel placed reliance on case laws reported as Dr. Muhammad Javed Shafi Vs Syed Rashid Arshad and others (PLD 2015 SC 212), Muhammad Islam Vs IGP, Islamabad (2011 SCMR 8), Muhammad Mustansir Vs Mahndi Khan and others (2020 CLC Note 4) & Ghulam

Qadir and others Vs Sh. Abdul Wadood and others (PLD 2016 SC 712).

3. The Civil Procedure Code (Amendment) Ordinance, 2019 (Ordinance No.XXII of 2019) was promulgated on 1st November 2019 which was superseded by the Civil Procedure Code (Amendment) Act, 2020 promulgated on 22.02.2020. The substitution of section 115 in both the enactments i.e. Ordinance, 2019 and Act, 2020, referred to above is contained in section 15, which reads as under:-

“115. Revision.---Any party aggrieved by an order under section 104, passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge, as the case may be, may within thirty days of the said order may file a revision to the High Court on an obvious misapprehension of law or in respect of a defect in jurisdiction.”

4. The above provision clearly states that any party aggrieved by an order under section 104 CPC passed by the court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge as the case may be, may file a revision within thirty days of said order to the High Court while under the erstwhile provision of section 115 CPC, any case which has been decided by any court subordinate to High Court and in which no appeal lies thereto, could be assailed through a revision petition.

5. Through the instant civil revision petition, petitioner assails concurrent Judgments &

Decrees and, therefore, is not covered under Section 15 of the Act, 2020.

6. The another aspect of the matter is that the Ordinance, 2019 came into existence on 01.11.2019 while the revision petition was filed on 20.01.2020 i.e. after about two and a half months therefore, the ground that the same has been filed prior to promulgation of the Act, 2020 is misconceived as the substituted clause i.e. Section 15 had been in existence under the Ordinance, 2019 which was subsequently incorporated in the Act, 2020 also. The case law relied upon by learned counsel for the petitioner relates to different proposition of law and facts therefore not applicable to the instant case.

7. In view of above, the instant civil revision petition is dismissed being not maintainable. However, the petitioner would be at liberty to avail remedy available to him under the law, if so advised.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail