

Supreme Court of India

Vishesh Kumar vs Shanti Prasad on 12 March, 1980

Equivalent citations: 1980 AIR 892, 1980 SCR (3) 32

Author: R Pathak

Bench: Pathak, R.S.

PETITIONER:

VISHESH KUMAR

Vs.

RESPONDENT:

SHANTI PRASAD

DATE OF JUDGMENT 12/03/1980

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

KRISHNAIYER, V.R.

CITATION:

1980 AIR 892 1980 SCR (3) 32

1980 SCC (2) 378

CITATOR INFO :

RF 1980 SC1575 (1,2,4)

F 1987 SC 203 (22)

RF 1987 SC2323 (3,4,6,10,13)

E 1988 SC 812 (8,12,15,18,21,29)

ACT:

Code of Civil Procedure-S. 115-State amendments bifurcated revisional jurisdiction between High Court and District Court-High Court-If possesses revisional jurisdiction from an order of District Judge disposing of revision petition.

Provincial Small Cause Courts Act -Section 25-High Court-If possesses jurisdiction under section 115 C.P.C. against an order of District Judge under section 25 of the Act disposing of a revision petition.

HEADNOTE:

Section 115 of the Code of Civil Procedure confers on the High Court of a State power to remove any jurisdictional error committed by a subordinate court in cases where the error cannot be corrected by resort to its appellate jurisdiction. From its inception there was increasing resort to the revisional jurisdiction of the High Court under s. 115. To alleviate the burden of arrears and reduce the

volume of litigation which had reached an insupportable point, s. 115 was amended by successive state amendments, each amendment attempting to close the gap left by its predecessor. The amendments conferred revisional jurisdiction both on the High Court and the District Court each enjoying mutually exclusive revisional powers. The consistent object behind the successive amendments was to divide the work load of revision petitions between the High Court and the District Court and decentralise the jurisdiction. A proviso was added to s. 115 by the U.P. Civil Laws Amendment Act, 1973 declaring that "in respect of cases.....arising out of original suits of any valuation decided by the District Court the High Court alone shall be competent to make an order under this section."

The Code of Civil Procedure (Amendment) Act, 1976 superseded the scheme of bifurcation of revisional jurisdiction with effect from 1st February 1977. With certain modifications the position reverted to what it was under the original s. 115. An exception was made where a revision petition under s. 115 had been admitted after preliminary hearing before 1st February 1977; it would continue to be governed by s. 115 as it stood before that date. But the Code of Civil Procedure (U.P. Amendment) Act 1978 substantially restored the status quo ante.

Section 25 of the Provincial Small Cause Courts Act was amended from time to time in its application to the State of U.P. The first amendment substituted the District Judge for the High Court. A further amendment made in 1972 added a proviso which declared that in relation to any case decided by a District Judge or Additional District Judge exercising jurisdiction of a Judge of Small Causes Court the power of revision under s. 25 would vest in the High Court.

33

The two questions that fell for consideration were :
(i) whether the High Court possesses the revisional jurisdiction under s. 115 of the Code of Civil Procedure in respect of an order of the District Court under s.115 disposing of a revision petition and (ii) whether the High Court possesses revisional jurisdiction under s. 115 against an order of District Court under s. 25 Provincial Small Cause Courts Act disposing of a revision petition,

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HELD : The High Court is not vested with revisional jurisdiction under s. 115 Code of Civil Procedure over the revisional order made by the District Court under that section. [40 H]

(a) To recognise a revisional power in the High Court over the revisional order passed by the District Court would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction-to reduce the number of revision petitions filed in the High Court-would be frustrated. The scheme would lose its meaning. If a revision petition is permitted to the High Court against the

revisional order of the District Court arising out of a suit of a value less than Rs. 20,000 a fundamental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court, for the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation of below Rs. 20,000/- [39 G-H]

(b) What the proviso introduced in s. 115 by the Civil Laws Amendment Act, 1973, stated was that no matter what the valuation of the original suit, if a case arising out of such suit was decided by the District Court, the case would be amenable to the revisional power of the High Court. What is covered by the substantive provision are cases arising out of original suits of a value of Rs. 20,000/- or more. The other category covered by the proviso would include those instances where an original suit, although of a value making it triable by a court subordinate, is transferred to the District Court for trial. Orders passed by the District Court in such a suit could constitute a case decided by it and amenable to the revisional power of the High Court. The test incorporated in the proviso is the fact that the case has been decided by the District Court. The valuation of the suit is irrelevant. The proviso cannot be construed to include the case of a revisional order passed by the District Court for that would be in direct conflict with the fundamental structure itself of section 115. A proviso cannot be permitted by construction to defeat the basic intent expressed in the substantive provision. [40 C-F]

M/s. Jupiter Fund (Pvt.) Ltd. v. Dwarka Diesh Dayal and others A.I.R. 1979 All. 218 approved.

2. (a) An order passed under s. 25 of the Provincial Small Cause Courts Act by a District Court is not amenable to the revisional jurisdiction of the High Court under s. 115 of the C.P.C. [42 F]

(b) An examination of the several provisions of the Provincial Small Cause Courts Act indicates that it is a self-sufficient code so far as the present enquiry is concerned. The Legislature clearly intended that a decree or order made by a Court of Small Causes should be final subject only to correction by the remedies provided under the Provincial Small Cause Courts Act. All the indications contained in the Act point to the conclusion that a case falling

34

within the Provincial Small Cause Courts Act was never intended to be subject to the remedies provided by the Code of Civil Procedure. By way of abundant caution, s. 7 of the Code made express provision barring the application of ss. 96 to 112 and 115 of the Code to courts constituted under the Provincial Small Cause Courts Act. Section 7 of the Code merely embodies the general principle against resort to remedies outside the Provincial Small Cause Courts Act. Although the court of the District Judge is not a court

constituted under the Act the general principle continues to take effects. No change in the principle was brought about merely because revisional power under s. 25, before the proviso was added, was now entrusted to the District Judge. The legislative intention behind the amendment was to relieve the High Court of the burden of exercising revisional jurisdiction in respect of cases decided under the Provincial Small Cause Courts Act. Therefore the central principle continues to hold, notwithstanding the amendment effected in s. 25, that the hierarchy of remedies enacted in the Provincial Small Cause Courts Act represents a complete and final order of remedies, and it is not possible to proceed outside the Act to avail of a superior remedy provided by another statute. [4] E-42 A-D]

Bimla Rani Kohli v. M/s. Bandu Motor Finance Pvt. Ltd.
A.I.R. 1972 All. 342; over-ruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2844 of 1979.

Appeal by Special Leave from the Judgment and Order dated 17-8-1979 of the Allahabad High Court in Civil Revision No. 1273 of 1976.

Pramod Swarup for the Appellant.

N. K. Agarwal for the Respondent (Amicus Curiae). The Judgment of the Court was delivered by PATHAK, J. This appeal by special leave and the four associated special leave petitions question the dismissal by the High Court of Allahabad of five revision petitions filed under Section 115, Code of Civil Procedure, on the ground that they are not maintainable.

Although the five cases before us must be considered in the context of their individual facts, it is desirable to appreciate the relevant jurisdictional structure of revisional power enjoyed by the High Court from time to time. In 1970, the provisions of s. 115, Code of Civil Procedure, read :

"115. Revision : 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 court subordinate appears :

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have exercised a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally with material irregularity, the High Court may make such order in the case as it deems fit."

A schematic analysis of the judicial hierarchy within a State indicates that the High Court, as the apex court in the hierarchy, has been entrusted, not only with the supreme appellate power exercised within the State but also, by virtue of s. 115, the power to remove, in order to prevent a miscarriage of justice, any jurisdictional error committed by a subordinate court in those cases where the error cannot be corrected by resort to its appellate jurisdiction. The two salient features of revisional jurisdiction under s. 115 are, on the one hand, the closely limited grounds on which the court is permitted to interfere and on the other, the wide expanse of discretion available to the court, when it decides to interfere, in making an appropriate order. The intent is that so serious an error as one of jurisdiction, if committed by a subordinate court, should not remain uncorrected, and should be removed and the record healed of the infirmity by an order shaped to re-instate the proceeding within the proper jurisdictional confines of the subordinate court. It is a power of superintendence, and fittingly it has been conferred in terms enabling the High Court to exercise it, not only when moved by an aggrieved person, but also suo motu. While considering the nature and scope of the revisional jurisdiction, it is necessary however, to advert to prime circumstance that in civil cases the jurisdiction has been entrusted to the highest court of the State, demonstrating that broadly the order under s. 115 is to be regarded, in the absence of anything else, as a final order within the State judiciary.

From its inception there was increasing resort to the revisional jurisdiction of the High Court under s. 115. Over the years the volume of litigation reached an insupportable point in the pending docket of the Court. To alleviate the burden, a pattern of decentralisation of revisional power was adopted and s. 115 was amended by successive State amendments, each attempting to close the gap left by its predecessor. In its meandering course from stage to stage, this is how s. 115 read :

1. From 7th April, 1970 :

By virtue of s. 3, U.P. Civil Laws (Amendment) Act, 1970, s. 115 was amended and the result was that :

(i) The High Court had exclusive jurisdiction under s. 115 in a case arising out of an original suit of the value of Rs. 20,000 and above; and

(ii) The High Court and the District Court had jurisdiction under s. 115 concurrently in other cases.

2. From 20th September, 1972:

S. 6, U.P. Civil Laws (Amendment) Act, 1972 amended s. 115 further with effect from 20th September, 1972. Later, s. 115 was amended by s. 2, U.P. Civil Laws (Amendment) Act, 1973 in its application to Uttar Pradesh, retrospectively with effect from 20th September, 1972. In consequence:

(i) The High Court possessed exclusive jurisdiction under s. 115 in cases arising out of original suits of the value of Rs. 20,000 and above, including such suits instituted before 20th September, 1972:

(ii) The District Court possessed exclusive jurisdiction under s. 115 in any other case, including a case arising out of an original suit instituted before 20th September, 1972.

Provided that in respect of cases decided before 20th September, 1972 and also all cases arising out of original suits of any valuation, decided by the District Court, the High Court alone was competent to exercise revisional power under s. 115.

S. 2(e), U.P. President's Acts (Re-enactment with Modifications) Act, 1974 repealed the U.P. Civil Laws (Amendment) Act, 1973, and re-enacted it with certain modifications which, however, for the purposes of the present case are immaterial.

3. From 1st February, 1977:

S. 43, Code of Civil Procedure (Amendment) Act, 1976 was enacted by Parliament and amended s. 115 with effect from 1st February, 1977 making substantial changes therein. Section 97(1) of the Amendment Act provided that any amendment made, or provision inserted, in the Code of Civil Procedure by a State Legislature before the 1st February, 1978 would stand repealed except insofar as such amendment or provision was consistent with the Code as amended by the said Amendment Act. As the Code now amended provided for revisional jurisdiction in the High Court alone, the scheme embodied in s. 115 by the successive U.P. Amendment Acts was plainly inconsistent with the Code as now amended, and therefore stood repealed, the position reverting to what it was under the original s. 115 before its amendment by the U.P. Civil Laws (Amendment) Act, 1970. But s. 97(2) provided that s. 115 as now amended by the Amendment Act, 1976 would not apply to nor affect any proceeding for revision which had been admitted, after preliminary hearing, before 1st February, 1977 and every such proceeding for revision would be disposed of as if s. 43 had not come into force. The proviso was without prejudice to the generality of the provisions of s. 6, General Clauses Act, 1897. In the result :

(i) The High Court had exclusive jurisdiction under s. 115 in a revision petition filed on and after that date, irrespective of the valuation of the suit out of which the case arose :

(ii) A revision petition under s. 115 which had been admitted, after preliminary hearing, before 1st February, 1977 would continue to be governed by s. 115 as it stood before that date.

4. From 1st August, 1978:

Finally s. 3, Code of Civil Procedure (Uttar Pradesh Amendment), Act, 1978, which was deemed to have come into force on 1st August, 1978, amended s. 115 again and restored the bifurcation of revisional jurisdiction between the High Court and the District Court. Accordingly now:

(i) The High Court alone had jurisdiction under s. 115 in cases arising out of original suits or other proceedings of the value of Rs. 20,000 and above, including such suits or other proceedings instituted before 1st August, 1978;

(ii) The District Court alone has jurisdiction under s. 115 in any other case, including a case arising out of an original suit or other proceedings instituted before 1st August, 1978;

(iii) The High Court has jurisdiction under s. 115 in respect of cases, arising out of original suits or other proceedings of any valuation, decided by the District Court.

(iv) A revision proceeding pending immediately before 1st August, 1978 of the nature in which a District Court would exercise revisional power under s. 115 as amended by the Amendment, Act, 1978 if pending :

(a) in the District Court, would be decided by that court as if the Amendment Act of 1978 were in force at all material times ;

(b) in the High Court, would be decided by the High Court as if the Amendment Act of 1978 had not come into force.

The submissions made by learned counsel before us cover a wide field, but in the main, two questions arise :

(1) Whether the High Court possesses revisional jurisdiction under s. 115, Code of Civil Procedure in respect of an order of the District Court under s. 115 disposing of a revision petition ?

(2) Whether the High Court possesses revisional jurisdiction under s. 115 against an order of the District Court under s. 25, Provincial Small Cause Courts Act disposing of a revision petition ?

As regards the first question, it will be noticed that a revisional power was formerly entrusted exclusively to the highest court in the state, the High Court. The State amendments now divided it between the High Court and the District Court. The amendment effect by the U.P. Civil Laws (Amendment) Act, 1970 conferred exclusive jurisdiction under s. 115 in the High Court in cases arising out of original suits of the value of Rs. 20,000/- and above, and in other cases the revisional jurisdiction was concurrently shared between the High Court and the District Court. It was apparently supposed that the average litigant would prefer the less expensive and more convenient forum of the District Court. The measure, it seems, did not bring the relief expected, and the State Legislature found it necessary, by enacting the U.P. Civil Laws (Amendment) Act, 1972 to make a clear-cut division of jurisdiction between the High Court and the District Court, resulting in exclusive revisional jurisdiction to the High Court in cases arising out of original suits of the value of Rs. 20,000/- and above, and exclusive jurisdiction under s. 115 to the District Court in other cases. There was a sharp bifurcation of revisional jurisdiction, and the High Court and District Court now enjoyed mutually exclusive revisional powers. A controversy arose whether a revisional order under s. 115 made by the District Court was final or was itself amendable to the revisional power of the

High Court under the same section. The point was considered by a full Bench of the High Court in *Har Parasad Singh and others v. Ram Swarup and others* and it was held that no such revision petition was maintainable before the High Court. Further State amendments were made to s. 115 without materially disturbing the division of power. But a proviso added to s. 115 by the U.P. Civil Laws (Amendment) Act, 1973, followed by the U.P. President's Acts (Re-enactment with Modifications) Act, 1974 stated :

"Provided that in respect of cases decided before the 20th day of September, 1972, and also all cases arising out of original suits of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section."

The proviso reopened the controversy whether a revision petition lay to the High Court against a revisional order passed by the Dis-

trict Court, and on a difference of opinion between two learned judges a third learned judge of the Allahabad High Court now held in *Phool Wati and others v. Gur Sahai* that a revision petition would lie.

The Code of Civil Procedure (Amendment) Act, 1976, however, superseded the scheme of bifurcation of revisional jurisdiction with effect from 1st February, 1977 and, with certain modification the position reverted to what it was under the original s. 115. In other words, the entire sphere of revisional jurisdiction was restored to the High Court, no such power being now vested in the District Court. An exception was made where a revision petition under s. 115 had been admitted, after preliminary hearing, before 1st February, 1977; it would continue to be governed by s. 115 as it stood before that date. The situation lasted only briefly, for on 1st August, 1978 the Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978 substantially restored the status quo ante.

The controversy whether it is open to the High Court to exercise revisional power in respect of a revisional order under s. 115 of the District Court presents little difficulty. The basis for determining that question flows from the principle incorporated in the bifurcation of the revisional jurisdiction. And legislative history comes to our aid. The consistent object behind the successive amendments was to divide the work load of revision petitions between the High Court and the District Court and decentralise that jurisdiction. That purpose was sought to be achieved by classifying all cases into two mutually exclusive categories depending on the valuation of the suit out of which they arose. In determining whether the Legislature intended a further revision petition to the High Court, regard must be had to the principle that the construction given to a statute should be such as would advance the object of the legislation and suppress the mischief sought to be cured by it. It seems to us that to recognise a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction-to reduce the number of revision petitions filed in the High Court-would be frustrated. The scheme would, in large measure, lose its meaning. If a revision petition is permitted to the High Court against the revisional order of the District Court arising out of a suit of a value less than Rs. 20,000/-, a fundamental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court, for the High Court

would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs. 20,000/-. That was never intended at all.

In Phoolwati (supra), considerable importance was attached to the proviso introduced in s. 115 by the U.P. Civil Laws Amendment Act, 1973. The proviso declared that "in respect of..... all cases arising out of original suits of any valuation decided by the District Court, the High Court alone shall be competent to make an order under this section". What it said was that no matter what the valuation of the original suit, be it Rs. 20,000/- and above or below Rs. 20,000/-, if a case arising out of such suit was decided by the District Court, the case would be amenable to the revisional power of the High Court. We are already familiar with the category of cases where the High Court wields revisional jurisdiction over cases arising out of original suits of a value of Rs. 20,000/- or more. That is the category already covered by the substantive provision in s.

115. The other category covered by the proviso would include those instances, for example where an original suit although of a value making it triable by a court subordinate is transferred to the District Court for trial. Orders passed by the District Court in such a suit could constitute a case decided by it and amenable to the revisional power of the High Court. What must be noted is that the test incorporated in the proviso is the fact that the case has been decided by the District Court. The valuation of the suit is irrelevant. But the proviso cannot be construed to include the case of a revisional order passed by the District Court for that would be in direct conflict with the fundamental structure itself of s. 115 evidencing that a mutually exclusive jurisdiction has been assigned to the High Court and the District Court within its terms. A proviso cannot be permitted by construction to defeat the basic intent expressed in the substantive provision. Har Prasad Singh (supra) and Phoolwati (supra) were considered by a Full Bench of the High Court in M/s Jupiter Fund (Pvt.) Ltd. v. Dwarka Diesh Dayal and others and in our judgment the High Court rightly laid down there that the phrase "case arising out of an original suit" occurring in s. 115 does not cover orders passed in revision.

We are of opinion on the first question that the High Court is not vested with revisional jurisdiction under s. 115, Code of Civil Procedure-over a revisional order made by the District Court under that section.

We shall now advert to the second question, whether a revisional order of the District Court under s. 25, Provincial Small Cause Courts Act, is amenable to the revisional jurisdiction of the High Court under s. 115, Code of Civil Procedure. Section 25 originally provided:

"25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

Section 25 was amended in its application to the State of Uttar Pradesh from time to time. The first amendment substituted the District Judge for the High Court, so that the District Judge became the repository of revisional power instead of the High Court. A further amendment, made in 1972, added a proviso, which declared that in relation to any case decided by a District Judge or

Additional District Judge exercising the jurisdiction of a Judge of Small Causes the power of revision under s. 25 would vest in the High Court.

The question before us arises in those cases only where the District Judge has exercised revisional power under s.

25. Is an order so made open to revision by the High Court under s. 115, Code of Civil Procedure ? An examination of the several provisions of the Provincial Small Cause Courts Act indicates that it is a self-sufficient code so far as the present enquiry is concerned. For the purpose of correcting decrees or orders made by a Court of Small Causes the Act provides for an appeal and a revision in cases falling under s. 24 and s. 25 respectively. Cases in which the District Judge and the High Court respectively exercise revisional power, revisional powers are specifically mentioned. A complete set of superior remedies has been incorporated in the Act. Moreover, s. 27 of the Act provides:

"27. Finality of decrees and orders.-Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final."

The Legislature clearly intended that a decree or order made by a Court of Small Causes should be final subject only to correction by the remedies provided under the Provincial Small Cause Courts Act. It is a point for consideration that had s. 25, in its application to the State of Uttar Pradesh continued in its original form the High Court would have exercised the revisional power under s. 25, and no question could have arisen of invoking the revisional power of the High Court under s. 115 of the Code. All the indications point to the conclusion that a case falling within the Provincial Small Cause Courts Act was never intended to be subject to the remedies provided by the Code of Civil Procedure. By way of abundant caution s. 7 of the Code made express provision barring the application of ss. 96 to 112 and 115 of the Code to courts constituted under the Provincial Small Cause Courts Act. Section 7 of the Code merely embodies the general principle against resort to remedies outside the Provincial Small Cause Courts Act. Although the court of the District Judge is not a court constituted under the Act the general principle continues to take effect. No change in the principle was brought about merely because revisional power under s. 25, before the proviso was added, was now entrusted to the District Judge. It must be remembered that the legislative intention behind the amendment was to relieve the High Court of the burden of exercising revisional jurisdiction in respect of cases decided under the Provincial Small Cause Courts Act. We are of firm opinion that the central principle continues to hold, notwithstanding the amendment effected in s. 25, that the hierarchy of remedies enacted in the Provincial Small Cause Courts Act represents a complete and final order of remedies, and it is not possible to proceed outside the Act to avail of a superior remedy provided by another statute.

These considerations were apparently not present before the High Court of Allahabad when it held in *Bimla Rani Kohli v. M/s. Bandu Motor Finance (P) Ltd.* that a revisional order of the District Judge under s. 25, Provincial Small Cause Courts Act could be revised by the High Court under s. 115, Code of Civil Procedure. In our opinion, the view taken by the High Court is not correct.

Accordingly, we hold that an order passed under s. 25, Provincial Small Cause Courts Act by a District Court is not amenable to the revisional jurisdiction of the High Court under s. 115, Code of Civil Procedure.

In Civil Appeal No. 2844 of 1979, S.L.P. No. 9104 of 1979, S.L.P. No. 9142 of 1979 and S.L.P. No. 9752 of 1979, the High Court has rejected revision petitions filed under s. 115, Code of Civil Procedure, against the revisional orders of the District Court under s. 25, Provincial Small Cause Courts Act. On the opinion reached by us that a revision petition under s. 115 is not maintainable against a revisional order under s. 25, the appeal and the associated special leave petitions must be dismissed.

S.L.P. No. 9031 of 1979 arises out of an application for an ad interim injunction made in a pending suit. Since then the suit has been dismissed, and an appeal against the decree is pending. As the suit itself has been disposed of, all proceedings for grant of interim relief must be regarded as having lapsed. The Special Leave Petition has become infructuous and must be dismissed accordingly.

It has been urged by the appellant in Vishesh Kumar v. Shanti Prasad (Civil Appeal No. 2844 of 1979) that in case this Court is of the opinion that a revision petition under s. 115, Code of Civil Procedure, is not maintainable, the case should be remitted to the High Court for consideration as a petition under Article 227 of the Constitution. We are unable to accept that prayer. A revision petition under s. 115 is a separate and distinct proceeding from a petition under Article 227 of the Constitution, and one cannot be identified with the other.

In the result, the appeal and the special leave petitions are dismissed. There will be no order as to cost.

P.B.R.

Appeal and Petitions dismissed.