

State Bank Of India vs Saurabh Garg And Ors on 27 March, 2025

\$~55

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision:

+

C.R.P. 48/2025, CM APPL. 8137/2025

STATE BANK OF INDIA

....

Through: Mr. Shiv. K. Tyagi, Adv

versus

SAURABH GARG AND ORS

.....Respondents

Through: Mr. Pradeep Dewan, Sr. Adv. with
Ms. Anupam Dhingra, Advocate for
R-1 to 4.

Mr. Chandrashekhar Chakalabbi &
Mr. Varnik Kundaliya, Advocates for
R-5.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 17.12.2024 passed by learned District Judge- 09, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, an additional opportunity to lead evidence was declined by the learned Trial Court and the evidence of the Petitioner [Defendant No.2 before the learned Trial Court] stood closed.

2. Learned Counsel for the Petitioner submits that the Impugned Order suffers from an infirmity. It is submitted that the Petitioner made various efforts to locate its witness and even filed process fee several times, however, the witness could not be summoned. It is further submitted, relying on Annexure P-8 and P-9, that all requisite steps were taken, however, in view of the fact that the witness did not appear, additional time was sought by the Petitioner for summoning the witness.

3. Learned Counsel for the Respondent Nos.1 to 4 [Plaintiffs before the learned Trial Court], on the other hand, submits that, in the first instance, the Petition is barred by the proviso to Section 115 of the CPC. Learned Counsel for the Respondent Nos.1 to 4 seeks to rely upon the judgment of the Supreme Court in Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.1 in this behalf.

3.1 Secondly, it is contended on merits that the provisions of Order XVI of the CPC provide for various other methods to secure witnesses, which include producing witnesses of their own. Reliance is placed on Order XVI Rule 7(a) of the CPC.

4. This Court has examined the Impugned Order.

5. The Impugned Order records that a similar attempt was made by the Petitioner on 18.09.2023, and by the order of even date, the application was allowed. The relevant extract of the order dated 18.09.2023 is set out below:

"It is informed that defendant no.1 has closed their evidence long time back.

In view of above, defendant no.2 is directed to take fresh steps to summon the witness(s) for next date. Considering the fact that two of the witnesses are based outside Delhi, their summons be also sent through registered post as well as through e-mode i.e. e-mail and an affidavit of said defendant regarding service of summons through e-mail, be also placed (2003) 6 SCC 659 on record on the next date. Steps within seven days.

Put up for DE of defendant no.2 on 18.12.2023."

6. Subsequently, the order dated 03.12.2024 passed by the learned Trial Court reflects that the matter pertains to the year 2004 and the submission made by the Petitioner on that date was that he could not file process fee to summon witness for that date and a last and final opportunity was granted making it clear that no adjournment will be granted on the next date of hearing. The relevant extract of order dated 03.12.2024 is set out below:

"...It is also informed by the counsel for plaintiff that the present matter pertains to the year,2004.

Ld counsel for SBI submitted that he could not file the PF to summon the witness for today's date.

Accordingly, in these circumstances, one last and final opportunity is given to the Ld. counsel for SBI to complete the DE on next date of hearing.

It is also made clear that no adjournment will be given on next date of hearing at any cost and opportunity will be closed automatically by virtue of this order.

Put up the matter for DE from the side of SBI, now on 17.12.2024."

[Emphasis Supplied]

7. The learned Trial Court, thereafter, has held in the Impugned Order that despite the opportunity being granted by the predecessor Court, another application was filed on 04.12.2024 by the Petitioner. It is stated that these applications are being filed delaying the adjudication of the proceedings.

7.1 The said Application seeks summoning of two additional witnesses. In view of the fact the witnesses were not produced by the Petitioner, by the Impugned Order, on 17.12.2024, the right to

lead further evidence was closed by the learned Trial Court.

8. Undisputably, the matter is pending since the year 2004 and has been at the stage of the evidence since the year 2014. As can be seen from the foregoing discussion, the learned Trial Court has granted repeated opportunities to the Petitioner to conclude its evidence in an expeditious manner which has not been done.

9. The Supreme Court in *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*², has held that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. The Supreme Court in *Ambadas Khanduji* case has held:

"14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court."

[Emphasis Supplied]

10. In any event, the maintainability of this Petition is also subject matter of challenge. It is no longer *res integra* that the provisions of Section 115 of the CPC cannot be invoked except where an order if made in favour of the revisionist would have finally dispose of the suit or proceedings. This is set (2017 14 SCC 132 out in the proviso to Section 115 of the CPC, which is below:

"Section 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 subordinate Court appears

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

(b) to have failed to exercise a jurisdiction so vested, or

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

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding,

except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings."

[Emphasis Supplied] 10.1 The Supreme Court in Shiv Shakti case has held that unless the order if given in favour of the party applying for the revision would have given finality to the suit or other proceeding, a revision is not maintainable. The relevant extract of the Shiv Shakti case is set out below:

"32. 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 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. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation."

[Emphasis Supplied]

11. Concededly, the Impugned Order is in the nature of an interim order and does not finally decide the lis between the parties. In any event and as stated above, the evidence in this matter is pending since the year 2014. Thus, this Court finds no reason to interfere with the Impugned Order.

12. The present Petition is accordingly disposed of. The pending Application also stands closed.

13. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J MARCH 27, 2025/ ha/jn Click here to check corrigendum, if any