

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 21.07.2023****Order Delivered on 11.08.2023****CR No. 27 of 2019**

Shrey Chouksey S/o Sh. Mukesh Chouksey Aged About 22 Years R/o Behind Jalaram Temple, Tikarapara, Bilaspur, Chhattisgarh.....Applicant (Decree Holder), District : Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Raghuwar Dayal Singhal S/o Late Sh. Shivdayal Singhal Aged About 68 Years Partner, M/s Panchvati Inn, R/o Singhal Sadan, Link Road, Bilaspur, Chhattisgarh.....Respondent No. 1 (Judgement Debtor No.1).
2. Gopal Krishna Singhal S/o Sh. Raghuwar Dayal Singhal Aged About 36 Years Partner, M/s Panchvati Inn, R/o Singhal Sadan, Link Road, Bilaspur, Chhattisgarh.....Respondent No. 2 (Judgement Debtor No.2)

---- Respondents

For Petitioner	:	Mr. Bidya Nand Mishra, Mr. Varunendra Mishra & Mr. Ganesh Ram Burman, Advocates
For Respondent	:	Mr. Anurag Dayal Shrivastava, Advocate.

Full Bench: Hon'ble Mr. Ramesh Sinha, CJ
 Hon'ble Mr. Parth Prateem Sahu, J
 Hon'ble Mr. Narendra Kumar Vyas, J

CAV Order**Per Ramesh Sinha, CJ**

1. Learned Single Judge taking note of the decision rendered by the Division Bench of this High Court in case of **R.S. Bajwa & Co. v. State of Chhattisgarh**, reported in **2013 (II) MPJR**

96, has referred following question for determination by a Larger Bench;-

“Whether proviso to Section 115 of the Code of Civil Procedure, 1908, as substituted by Act 46 of 1999, bars revision, if the proceedings revive instead being finally disposed off?

2. Before we proceed to deal with the question referred, we think it proper to narrate the facts of civil revision as also arguments advanced by learned counsel for respective parties, giving rise to the reference in question.
3. Some dispute arose out of an agreement entered between the petitioner and respondents which was referred to the Sole Arbitrator, who, in turn, passed the award dated 27.10.2014. Petitioners filed an application under Section 36 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') read with Order 21 Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') before the District Judge, Bilaspur for execution/enforcement of award. In an execution proceeding, respondents have submitted an application under Order 7 Rule 11 CPC seeking dismissal of execution proceedings. Learned District Judge while considering application under Order 7 Rule 11 CPC, arrived at a conclusion that subject matter of execution proceeding falls within the category of 'commercial dispute', as provided under Section 2 (c) of the Commercial Courts, Commercial Division

and Commercial Appellate Division of High Courts Act, 2015 and accordingly, returned back execution application filed under Section 36 of the Act of 1996 for filing it before appropriate jurisdictional commercial Court. Aggrieved therewith, petitioners have preferred civil revision under Section 115 of the Code before the High Court.

4. During the course of arguments before the learned Single Judge, learned counsel for respondents relied upon decision rendered by Hon'ble Supreme Court in the cases of **Babu Lal vs. Hazari Lal Kishori Lal & ors**, reported in (1982) 1 SCC 525 and **Shiv Shakti Cooperative Housing Society Vs. Swaraj Developers & ors**, reported in (2003) 6 SCC 659, to object maintainability of civil revision against the order of learned District Judge returning execution application for its presentation before the Court of competent jurisdiction.
5. On the other hand, learned counsel for respondents has placed reliance upon the decision of the Division Bench of this Court in case of **R.S. Bajwa (supra)** to submit that the order impugned in civil revision is revisable under Section 115 of CPC and as such, civil revision is rightly filed.
6. Learned Single Judge taking note of the proviso to Section 115 of CPC as also decision in case of **Shiv Shakti Cooperative (supra)** and **Babu Lal (supra)** concluded that decision in case of **RS Bajwa (supra)** needs reconsideration by a Larger Bench and therefore, referred the matter to a

Larger Bench by formulating above quoted question.

7. In the above factual backdrop of case, we find it appropriate to extract provisions of Section 115 of CPC herein below for ready reference:-

“115. Revision- (1) 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.]

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High

Court.”

8. By way of Amendment Act No.46 of 1999, which came into force w.e.f. 1.7.2002, clause (b) to proviso to Section 115 of CPC as existing pre- amendment was omitted.
9. Pre-amended provision of Section 115 CPC, is also extracted below for immediate perusal:-

“115. Revision- (1) 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

(a) 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. or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.”

10. Under the un-amended provisions of Section 115 CPC, all types of interlocutory orders, which are not appealable, can be assailed in revision by invoking provision under clause (b) of proviso to Section 115 of CPC. After deletion of clause (b) of proviso to Section 115 CPC, in the amended provision, as it exists today, the Parliament has imposed restriction in entertaining revision application/petition challenging any interlocutory order; revision will lie only 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 proceeding. In other words, if the effect of allowing revision application / petition filed by a party does not dispose of the suit or proceeding, said interlocutory order will not amenable to revision under Section 115 CPC.
11. After bringing into amendment in Section 115 of CPC by way of Amendment Act No.46 of 1999 w.e.f. 01.07.2002, this issue cropped up in the case of **Surya Devi Rai vs. Ram Chander Rai & ors**, reported in (2003) 6 SCC 675, as to what remedy will be available when the remedy of revision is taken away under the Statute, and the Hon'ble Supreme Court has observed thus:-

“4. Section 115 of the Code of Civil Procedure as amended does not now permit a revision petition

being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the proviso inserted under sub-section (1) of Section 115 of the CPC. The amendment is based on the Malimath Committee's recommendations. The Committee was of the opinion that the expression employed in Section 115 CPC, which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision but strongly felt that the power should be suitably curtailed. 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."

12. In case of **Salem Bar Association vs. Union of India**, reported in **(2005) 6 SCC 344**, a Three Judges Bench of Hon'ble Supreme Court has considered revisional power of the High Court under Section 115 (1) CPC under pre-

amended provision as also effect of amended provision and held that the curtailment of revisional jurisdiction of High Court under Section 115 of the Code does not take away and could not have taken away constitutional jurisdiction of the High Courts. The power exists, untrammelled by the amendment in Section 115 of the CPC. The power of the High Court under Article 226 and 227 of the Constitution of India is always in addition to the revisional jurisdiction conferred on it.

13. In case of **Shiv Shakti (supra)**, considering the issue of maintainability of revision application after amendment in Section 115 of CPC, it was observed as under:-

“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 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. There is marked distinction in 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 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.”

14. From bare reading of the proviso to Section 115 of CPC, it is clear that after amendment, which came into force w.e.f. 1.7.2002, the revisional jurisdiction of the High Court was restricted and High Court can exercise revisional jurisdiction only when the order if passed in favour of the party applying for revision would have finally disposed of suit or other proceeding. Hon'ble Supreme Court has also declared law in this regard in the aforementioned decisions and have further clarified as to which jurisdiction High Court can exercise after amendment in Section 115 of CPC, in case of interlocutory orders which are not appealable.
15. In the above facts of the case, the question which learned Single Judge has referred to us, has already been settled by Hon'ble Supreme Court.
16. So far as the reason for making reference to a larger Bench for reconsidering decision in case of **R.S. Bajwa (supra)** is concerned, the challenge in that case is also to the order passed by the District Judge in execution proceeding, allowed the objection with regard to the validity and enforceability of the award on the ground that the decree holder therein could

have filed proceedings under the provision of the Chhattisgarh Madhyastham Adhikaran Adhiniyam instead of taking recourse of appointing Arbitrator and held the executing Court is not having jurisdiction to execute award which is nullity. The order of District Judge allowing objection was put to challenge by filing writ petition under Article 227 of the Constitution of India. A Division Bench of this High Court taking note of amended provision of Section 115 CPC and extracting the same in the order, concluded that the District Judge being sub-ordinate to the High Court, the order passed was amenable to revisional jurisdiction of High Court under Section 115 of CPC and the same could not be made subject matter of writ jurisdiction under Article 227 of the Constitution of India. It was further observed by the Division Bench that “in other words, every order (if not made appealable) passed under the CPC is amenable to the remedy of the civil revision under Section 115 of the CPC.

17. From Paragraph-17 of the order passed in case of **R.S. Bajwa** (supra), it appears that though the Court has extracted amended provision, but existing proviso to Section 115 CPC escaped consideration and also escaped consideration of the decisions of Hon'ble Supreme Court on the scope of proviso to Section 115 of CPC.
18. The law with regard to maintainability of revision petition under the amended provision of Section 115 CPC has already been settled by Hon'ble Supreme Court prior to the order passed by

the Division Bench in **R.S. Bajwa's case (supra)** in
aforementioned decisions and therefore, we hold that the
order passed in case of **R.S. Bajwa (supra)**, so far as it holds
that revision application/ petition would lie against the order
passed by the Executing Court allowing objection that
execution application is not maintainable, is not a good law in
view of above cited decisions of Hon'ble Supreme Court.

19. The reference made by learned Single Judge stands
answered accordingly.
20. Let the matter be placed before the appropriate Bench as per
roster, for deciding civil revision in accordance with law.

Sd/-
(Narendra Kumar Vyas)
Judge

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice