



2025:DHC:3645



\$~50

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 08.05.2025

+ **C.R.P. 308/2024 & CM Appl.62661/2024**

OM PRAKASH KAITH SINCE DECEASED
THROUGH LRS. AND ANR.

...Petitioners

Through: Mr. Shubham Gupta, Ms. Prerna
Gupta and Mr. Preveen Gupta, Advs.

versus

CHETAN HANDA & ORS.

.....Respondents

Through: Ms. Rachita Garg and Mr. Agam
Rajput, Advs. for R-3.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] impugning the award dated 02.04.2024 [hereinafter referred to as "Impugned Order"] passed by the learned Additional District Judge-01, South West, Dwarka Courts, Delhi.

1.1 By the Impugned Order, learned Trial Court has disregarded the evidence of two witnesses which were to be examined by the Petitioner/Plaintiff.

2. The maintainability of this Petition is a 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 disposed of the suit or proceedings. This is set out in the proviso to Section 115 of the CPC 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]

2.1 The Supreme Court in *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.*¹ has held that unless the order is 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

¹ (2003) 6 SCC 659



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]

2.2 In the case of *Gayatri Devi v. Shashi Pal Singh*², the Supreme Court while relying on the *Shiv Shakti Coop. Housing Society case* has held that an order interim in nature or which does not finally decide the *lis*, cannot be challenged by way of a revision under Section 115 CPC.

“14. In the first place, it appears to us that the revision petition before the High Court was wholly incompetent in view of the amended provision of Section 115 CPC. The revision petition was entertained at the stage of interlocutory proceedings. As laid down by this Court in Shiv Shakti Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659] an order interim in nature or which does not finally decide the lis, cannot be challenged by way of a revision under Section 115 CPC.”

[Emphasis Supplied]

3. Concededly, the Impugned Order is not an order which is amenable to challenge under Section 115 of the CPC.

4. After some arguments, learned Counsel for the Petitioner seeks and is granted permission to withdraw the present Petition with liberty to agitate his contentions before the appropriate forum, in accordance with law.

5. The present Petition is accordingly dismissed as withdrawn with the liberty as prayed for. Pending Application also stands closed.

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

TARA VITASTA GANJU, J

MAY 8, 2025/r

[Click here to check corrigendum, if any](#)

² (2005) 5 SCC 527