



2025:DHC:5679



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 08.07.2025***+ **C.R.P. 30/2024, CM APPL. 4794/2024, 39292/2024 & 39380/2024**

RAJEEV BHARGAVA & ANR.Petitioners

Through: Mr. D.V. Khatri and Mr. Harshad
Gupta, Advocates.

versus

MANISH KUMAR JAIN & ORS.Respondents

Through: Mr. Anuj Gupta, Ms. Aditi Sharma
and Ms. Pinki Aggarwal, Advocates
for R-1 to 3.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The Registry is directed to ensure that book marking with double annexures is not permitted prior to registering the case files.

2. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to challenge an order dated 08.08.2023 passed by the learned ADJ-08, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. It is apposite to set out the prayers in the present Petition which read as follows:

"i) call for the record of Ld Trial court vide suit No.627/2022 in case title "Manish Kumar Jain & Ors. Vs Rajeev Bhargava & Ors." pending before the Court of Ms. Vandana, ADJ-08, (Central), Tis Hazari Courts, Delhi;

ii) allow the present revision petition filed by the petitioners and set aside the impugned order dated 08.08.2023 passed by the Ld. Trial Court of Ms. Vandana, ADJ-08, (Central), Tis Hazari Courts, Delhi in suit no.627/2022 and the application filed by the petitioners for revocation of the order dated



26.08.2022 may kindly be allowed, in the interest of justice, equity and fair play;

iii) Pass any further orders or directions which this Hon'ble Court may deems fit and proper in the present case in favour of the petitioners, in the interest of justice.”

3. Learned Counsel for the Petitioners submit that, by an order dated 26.08.2022, the learned Trial Court had directed that since directions to file a Written Statement had already been passed by the learned Trial Court, the Court was of the considered opinion that the Application under Section 92, CPC can be said to have been allowed on 08.06.2022. The learned Trial Court further passed a specific order on 26.08.2022 granting permission to the Plaintiff [Respondent No.1 before this Court] to file a suit under Section 92, CPC. The relevant extract of order dated 26.08.2022 is set out below:

“Since the Court has called for the written statement, therefore, I am of the considered opinion that the application under section 92 CPC can be said to have been allowed on 08.06.2022, however, a specific order is passed today that the application under section 92 CPC filed by the plaintiff is allowed. The permission to the plaintiff to file this suit under section 92 CPC is granted.

Defendants are directed to file written statement with advance copy to the plaintiff. The plaintiff is at liberty to file replication with advance copy to the defendants.”

[Emphasis supplied]

4. As stated above, the prayers in the present Petition only challenge the order dated 08.08.2023 and not the order dated 26.08.2022.

5. Learned Counsel for the Respondents has contended that a challenge to the order dated 08.08.2023 is barred by the proviso to Section 115, CPC



since it is not an order which if allowed, would finally dispose of a proceeding.

6. 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]

6.1 The Supreme Court in *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.*¹ 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:

¹ (2003) 6 SCC 659



“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]

6.2 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]

7. A perusal of the order dated 08.08.2023 shows that the order had been passed in pursuance of an Application under Section 151, CPC

² (2005) 5 SCC 527



seeking to challenge the order dated 26.08.2022. In addition, it records that the Review Petition was filed for recalling of the order dated 08.06.2022 which was dismissed by a detailed order passed by the predecessor Court on 26.08.2022. The learned Trial Court further gives a finding that after the dismissal of Review Petition, a fresh application with same submissions was filed on 26.09.2022 against the order dated 26.08.2022.

8. The learned Trial Court also raised an issue as to which provision of law that the Petitioners/Applicants seeking review of an order under review have invoked and dismisses the Application filed by the Petitioners. The relevant extract is set out below:

*“It is wrongly noted down in the previous order sheet that application under Order 39 Rules 1 and 2 is pending for disposal, however, arguments were heard on the application of the defendants no. 1 and 2 for revocation of the relief granted to the plaintiffs. **Through the application it has been stated that without giving opportunity to the defendants no. 1 and 2 to file reply to the application U/S 92 CPC, the said application was allowed and they were directed to file WS.** Thereafter, the review **petition was filed** by the applicant/defendants no. 1 and 2 which was dismissed vide order **dated 26.08.2022**. it has been further stated that the said **Mandir/property being a private property/Temple has been inherited by defendants no. 1 and 2 through succession and the said Mandir cannot be a public Temple in the eyes of law. Therefore, application U/S 92 CPC is liable to be dismissed.***

*The aforesaid application was strongly opposed submitting that the **Ld Predecessor of this court vide detailed order rightly allowed the application U/S 92 CPC and hence the application is not maintainable.***

Arguments heard. Case file perused.

Vide order dated 08.06.2022 defendants no. 1 and 2 were directed to file WS. Thereafter, the review petition was filed for recalling of order dated 08.06.2022 which was dismissed vide detailed order passed by the Ld Predecessor of this court. Thereafter, the present application was filed on 26.09.2022 again. The applicant/defendants no. 1 and 2 could not specify as to under which provision this application has been filed which provides for review of the order passed on the review application. The same



*submissions have been made through the present application which were made at the time of previous review application. **It appears to be an appeal against order dated 26.08.2022 and as per law the same trial court cannot hear the appeal of its own order. In view of the above, the application stands dismissed subject to cost of Rs.8,000/- payable to the plaintiff.***

[Emphasis supplied]

9. The revisionary jurisdiction of this Court is limited. The Court is only required to examine whether there was an absence of jurisdiction or the non-exercise of jurisdiction by the learned Trial Court. A review of the order dated 08.08.2023 shows that the order has been passed by the Trial Court giving two findings. Firstly, that the Petitioners/Applicants are unable to show the provision of law based on which the Application has been filed. Secondly, the challenge made by the Petitioners has already previously been made in an Application for review which has been disallowed by the learned Trial Court by its order dated 26.08.2022.

10. Clearly, to the limited extent that the learned Trial Court has examined this matter, the Court can find no infirmity with this finding of the learned Trial Court. In addition, a review of the prayers made in the present Petition as reproduced above shows that the challenge in the present Petition is not to the order dated 08.06.2022 or 26.08.2022 but to the order dated 08.08.2023 above.

10.1 As stated above, the remedy of the Petitioners does not lie before this Court in view of the proviso to Section 115, CPC.

11. The Petition is accordingly dismissed. Pending Applications stand closed.



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

TARA VITASTA GANJU, J

JULY 8, 2025/pa

Click here to check corrigendum, if any