



2025:DHC:5581



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

% ***Date of Decision: 10.07.2025***

+ **C.R.P. 150/2022 & CM APPL. 42291/2022**

NARESH KUMAR

.....Petitioner

Through: Mr. L.B. Rai, Mr. Vineesh Tyagi &
Mr. Rohit Kumar Poddar, Advocates.

versus

OM PRAKASH & ORS.

.....Respondents

Through: Mr. Yakchhandar Jain, Mr. Rajesh
Jain & Ms. Annu Jain, Advocates for
R-1 & 2 alongwith R-1 in person.

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 28.07.2022 passed by learned SCJ, Shahdara, Karkardooma Court, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order XXXIX Rules 1 and 2 of the CPC filed by the Petitioner has been dismissed by the learned Trial Court and the Appeal filed against that that order has also been dismissed by the learned Appellate Court.

2. Learned Counsel for the Petitioner submits that the revision petition is maintainable because an appeal cannot be filed.

3. 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]

3.1 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:

“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

¹ (2003) 6 SCC 659



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]

3.2 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]

4. As stated above, the challenge in the present Petition is to an order passed by the learned Appellate Court on 28.07.2022. The record reflects that an Application was filed under Section XXXIX Rules 1 and 2 of the CPC by the Petitioner/Plaintiff, which was dismissed by the learned Trial Court by an order dated 26.02.2022 passed by the learned Trial Court. This dismissal was challenged by the Petitioner in an Appeal and the learned Appellate Court found that no *prima facie* case was made out in favour of

² (2005) 5 SCC 527



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the Petitioner and thus has dismissed the Appeal by the Impugned Order. The Impugned Order challenges the order of dismissal of the learned Appellate Court dismissing the Appeal filed by the Petitioner/Plaintiff.

4.1 Concededly, the Impugned Order does not give a finality to the proceedings at hand. Thus, the Impugned Order is not an order which is amenable to challenge under Section 115 of the CPC.

5. After some arguments, learned Counsel for the Petitioner seeks and is granted permission to withdraw the present Petition with liberty to agitate all contentions before the appropriate forum.

6. Learned Counsel for the Petitioner also requests that in view of the fact that the interim directions have been passed by a Coordinate Bench of this Court on 26.09.2022, the directions be not vacated until appropriate steps are taken.

7. The present Petition is accordingly dismissed as withdrawn with the liberty as prayed for, *albeit* in accordance with law. The Pending Application also stands closed.

8. In the meantime, and for a period of upto four weeks from today, the status quo shall be maintained by both the parties, in respect of the possession and title of the suit property bearing No.77A, Gali No.8, Village Tahirpur, Dilshad Garden out of Khasra No.1min in Village Tahirpur, Illaka Shahdara, Delhi-110095.

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

TARA VITASTA GANJU, J

JULY 10, 2025/ ha