

RAJASTHAN HIGH COURT

Before :- Prashant Kumar Agarwal, J.

S.B. Civil Revision Petition No. 32 of 2009. D/d. 31.05.2012.

M/s. Rishabdev Educational & Research Institute - Petitioner

Versus

M/s. Career Point & Anr. - Non-Petitioner

Equivalent Citation: 2013 AIR CC 278 : 2013(2) ICC 97 : 2012(3) CivCC 758 : 2012(3) DNJ 1455 : 2012(118) AIC 580 : 2013(55) PTC 394 : 2012(4) W.L.C. 756 : 2013(6) R.A.J. 722

For the Petitioners :- Ms. Suruchi Kasliwal and R.N. Vijay, Advocates.

For the Non-Petitioners :- Rajendra Prasad, Sr. Advocate with **G . D . Bansal** , Sandeep Maheshwari and M. Sriomani, Advocates.

A. Civil Procedure Code, 1908, Section 115 (Proviso) - `Final disposal of suit'- Final disposal of suit is not the Court-wise disposal but suit-wise disposal and that too disposal according to law - It means ultimate ending of suit either for default of parties or compromise or due to the order of the Court.

[Para 7]

B. Civil Procedure Code, 1908, Order 7 Rules 10, Section 115 - Dismissal of application under Order 7 Rules 10 for return of plaint on ground of jurisdiction - Revision not maintainable - 2003(6) SCC 659 relied upon.

[Para 7]

Cases Referred :

[Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and others, 2003\(2\) Apex Court Judgments 182 \(S.C.\) : 2003\(6\) SCC659.](#)

JUDGMENT

Prashant Kumar Agarwal, J. - The defendant-petitioner has preferred this revision petition under Section 115 of the Code of Civil Procedure against the impugned order dated 27.01.2009 passed by the Additional District Judge No.4, Jaipur City, Jaipur in Civil Suit No.47/2008 whereby the learned Court below has dismissed the application under Order 7 Rule 10 Civil Procedure Code filed by the defendant-petitioner.

2. Brief relevant facts for the disposal of this revision petition are that plaintiff- non-petitioner filed a suit for permanent injunction against the petitioner in which an averment was made that the cause of action has arisen within the jurisdiction of the Court below and, therefore, the Court below has jurisdiction to entertain and decide the suit filed by the non-petitioner. The petitioner filed an application under Order 7 Rule 10 Civil Procedure Code stating therein that for the reasons stated in the application the Court below has no

jurisdiction to entertain and decide the suit filed by the non-petitioner. Reply to the application was filed by the non-petitioner and the learned Court below after hearing both the parties dismissed the application vide impugned order dated 27.01.2009. Feeling aggrieved, the defendant-petitioner is before this Court by way of this civil revision petition.

3. As during the course of hearing preliminary objection regarding maintainability of the revision petition under Section 115 Civil Procedure Code was taken on behalf of the non-petitioner, it is appropriate to consider and decide the same at the very outset.

4. Inviting the attention of the Court towards amended Section 115 of the Code it was submitted by the learned counsel for the non-petitioner that revision petition is maintainable only when the order if it had been made in favour of the party applying for revision would finally disposed of the suit or other proceedings. According to learned counsel in the present case the defendant-petitioner filed an application under Order 7 Rule 10 Civil Procedure Code praying therein that the Court below has no territorial jurisdiction to entertain and decide the suit filed by the non-petitioner and the same is liable to be returned to the non-petitioner for presenting it in a proper Court and, therefore, if the application so filed would have been allowed and an order had been made in favour of the petitioner by the Court below, as a consequence of that at the most the plaint filed by the non-petitioner would have been returned to him for presenting it before a proper Court but mere return of plaint for presenting it to a proper Court does not tantamount to final disposal of the suit within the meaning of proviso to Section 115 Civil Procedure Code. It was further submitted that the words "finally disposed of" carry the meaning that there should be some decision on merit whereas in a case where a plant is returned by a Court finding that it has no jurisdiction to entertain it, merit of the case is not considered. In support of his submissions, learned counsel for the non-petitioner relied upon the case of **Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and others, reported in 2003(2) Apex Court Judgments 182 (S.C.) : 2003(6) SCC659.**

5. On the other hand, learned counsel for the petitioner submitted that revision petition is maintainable even against the impugned order because if a plaint is returned by a Court under Order 7 Rule 10 Civil Procedure Code it means that the suit filed before that Court is finally disposed of so far as that Court is concerned. It was further submitted that for the applicability of proviso to sub-section (1) of Section 115 Civil Procedure Code it is to be considered whether the suit has finally been disposed of by the Court in which it was filed and not whether it has been finally disposed of on merit.

In support of her submissions, learned counsel for the petitioner relied upon the case of *Nirmai Kar V. Bishnupada Sana & Anr.* reported in 2010(3) Lawdigital.in 269 (Gauhati) :AIR 2011 (Gauhati) 1.

6. I have considered the submissions made on behalf of the respective parties and also gone through the impugned order as well as the relevant legal provisions and the case law relied upon by the respective parties.

The question required to be considered and decided at the outset is "whether revision petition under Section 115 Civil Procedure Code is maintainable against the impugned order whereby the learned Court below has dismissed the application under Order 7 Rule 10 Civil Procedure Code filed by the petitioner."

Hon'ble Supreme Court in the case of **Shiv Shakti Coop. Housing Society, Jaipur v. Swaraj Developers and others** (supra) has held that:

"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 Us, the revision will not be maintainable. "

7. In the present case, it is to be considered if the application filed by the petitioner had been allowed whether it would have given finality to the suit filed by the non- petitioner. I am of the view that if the application had been allowed by the Court below and order in favour of the petitioner were made, the result at the most would have been that the plaint filed by the non-petitioner would have been returned to him with a direction to present it before a proper Court but mere return of plaint could not mean that the suit has been finally disposed of. The phraseology "final disposal of the suit" used in the proviso is to be understood not the Court wise disposal but suit wise disposal and that too application filed by the defendant under Order 7 Rule 10 Civil Procedure Code. the suit would not have been finally disposed of, rather the plaint has been returned and the lis between the parties pending. Disposal of suit means determination of the process undertaken by the Court for deciding the issue in the lis between the two contending parties. "Finally disposed of the suit" means ultimate ending of the suit either for default of the parties or compromise or due to the order of the Court. Although, after return of the plaint by the Court in which it was filed so far as that Court is concerned, the suit is ended or finally disposed of but there is no final disposal of the suit itself. The plaintiff has a right to file the plaint so returned in an appropriate Court and dispute between the parties remains pending for adjudication. This much is not sufficient that so far as that Court is concerned, the suit has come to an end as soon as the plaint was returned to the plaintiff. The purpose of making amendment in Section 115 Civil Procedure Code in the year 2002 was to further curtail the jurisdiction of the High Court to entertain revision petitions. If keeping in mind the purpose of the amendment so made, the meaning of the words "finally disposed of" is considered it cannot carry any other meaning otherwise than that the merit of the suit is considered and decided.

8. The result of all this discussion is that the preliminary objection raised on behalf of the non-petitioner is legally sustainable and is liable to be allowed.

Consequently, the revision petition is dismissed as not maintainable without any order as to costs. The stay application also stands dismissed.

Appeal dismissed.