

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 6TH DAY OF MARCH, 2021

BEFORE

THE HON'BLE MR. JUSTICE P. KRISHNA BHAT

CIVIL REVISION PETITION NO.100019/2020

BETWEEN:

M/S SUVIDHA REALTORS AND
CONSTRUCTIONS PVT LTD
REPRESENTED BY ITS MANAGING DIRECTOR
SRI DINESH R MAHAJAN
AGED ABOUT 61 YEARS, AND ITS DIRECTOR
TEJPRAKASH MAHAJAN
AGED ABOUT 58 YEARS
BOTH RESIDING AT NO.2
CENTRAL LIBRARY CAMPUS,
LAMINGTON ROAD, HUBLI.

...PETITIONER

(BY SMT.G.MEERABAI S.S.NIRANJAN, ADV.,)

AND:

1. THE HUBLI TALUKA AGRICULTURAL
PRODUCE CO-OPERATIVE
MARKETING LTD., A-1, APMC
YARD, AMARGOL, HUBLI – 580025
BY ITS SECRETARY

2. THE REGISTRAR OF CO-OPERATIVE
SOCIETIES IN KARNATAKA
NO.1, ALI ASKAR ROAD
BANGALORE – 560052

...RESPONDENTS

(BY SMT.SHARMILA. M. PATIL ADV.,)
FOR R1, AGA FOR R2)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION
115 OF CPC, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND

ORDER DATED 31.01.2020 AND REMAND THE MATTER TO THE TRIAL COURT WITH DIRECTION TO DISPOSE OFF THE SUIT ON MERITS, IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS CIVIL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 26.02.2021 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

In this petition filed under Section 115 of the Code of Civil Procedure, 1908 (for short referred to as `CPC'), the petitioner is calling in question the legality and validity of the order dated 31.01.2020 passed in O.S.No.51/2009 by the learned Principal Senior Civil Judge, Hubballi, returning the plaint of the plaintiff.

2. The revision petitioner is the plaintiff in O.S.No.51/2009 filed for seeking the relief of declaration that resolution dated 24.11.2008 passed by defendant No.1 – respondent No.1 and letter addressed by respondent No.1 to the petitioner on 29.11.2008 terminating the contract of the petitioner as bad in law, void and not binding on the petitioner and also for a declaration that order passed by respondent No.2 dated 19.03.2009 granting permission to respondent No.1

to call for fresh auction to sell the suit properties based on the resolution dated 24.11.2008 and letter dated 20.11.2008 are illegal, null and void, etc. The learned court below by its order dated 31.01.2020 has returned the plaint to the petitioner. Being aggrieved by the said order, the plaintiff – revision petitioner is before this Court.

3. The office has raised objections regarding the maintainability of the revision petition under Section 115 of CPC as against the impugned order dated 31.01.2020 passed by the learned court below. Respondents who are the defendants before the Court below have also taken up the same contentions.

4. Learned counsel for the petitioner contended before me that the order of the learned court below is one of returning the plaint and therefore it is not a judgment or a decree and consequently an appeal under Section 96 of CPC is not maintainable. He further submitted that the impugned order is not appealable under Section 104 read with Order 43 Rule 1 of CPC as well. He therefore further contended that the impugned order can be questioned by the petitioner only under

Section 115 of CPC and as such, the present revision petition is maintainable. In support of his elaborate contentions, he has placed reliance on the following decisions :

1. W.P.No.113059/2014 – Dalawai Nagappa since deceased by LRs. And ors. Vs. P. Abdul Bari and others.
2. (1977) 4 SCC 551 – Madhu Limaye vs. The State of Maharashtra.
3. (2003) 6 SCC 675 – Surya Dev Rai vs. Ram Chander Rai and others.
4. ILR 2018 Kar. 3785 – Nazir Aharnad and ors. Vs. Anwarpashya Sayyadmeera Mujwar and ors.

5. Learned counsel for the respondents, per contra, contended before me that the above revision petition is not maintainable under Section 115 of CPC. It was the contention of learned counsel for the respondents that the revision petition is directly hit by proviso to sub-Section (1) of Section 115 of CPC and he has also placed reliance on several decisions as follows :

1. ILR 2004 Kar. 1445 – The Arogyanagar Co-operative Housing Society Ltd. And others vs. Fakiragouda and others.
2. AIR 1977 SC 148 – State of Maharashtra and others vs. Chander Kant.
3. ILR 2018 Kar. 3785 – Nazir Ahamad and others vs. Anwarpashya Sayyadmeera Mujwar and others.
4. 2001 (1) Kar.L.J. 36 – State and others vs. Prabhakar.

5. AIR 1963 SC 424 – Amar Nath Dogra vs. Union of India.
6. AIR 1991 Delhi 298 – The New India Assurance Co. Ltd. And ors. Vs. The Delhi Development Authority and ors.
7. AIR 1984 SC 1043 – Bihari Chowdhary and ors. Vs. State of Bihar and ors.
8. AIR 1965 SC 11 – State of Andhra Pradesh vs. Gundugola Venkata Suryanarayana Garu.
9. AIR 1969 SC 1256 – Beohar Rajendra Sinha and ors. Vs. State of Madhya Pradesh and ors.
10. AIR 1969 SC 674 – Raghunath Das vs. Union of India and ors.

6. The petitioner – plaintiff has filed a suit for declaration against the defendants – respondents in O.S.No.51/2009 before the learned Principal Senior Civil Judge, Hubballi. By order dated 31.01.2020, learned Court below has returned the plaint. The operative portion of the impugned order reads as follows :

“ORDER

The suit of the plaintiff is not maintainable for want of compliance of statutory/mandatory notice under Section 125 of Karnataka Co-operative Societies Act against the defendant No.1.

Hence, suit of the plaint is ordered to be returned to the plaintiff.

No order as to costs.”

7. As is apparent from the above, the learned Court below has passed the impugned order returning the plaint to the plaintiff for want of compliance of statutory/mandatory notice under Section 125 of the Karnataka Co-operative Societies Act, 1959, against defendant No.1. Learned counsel for the petitioner has no doubt taken up a contention that under Section 125 of the Karnataka Co-operative Societies Act, 1959, the requirement of issuance of statutory notice is only to defendant No.2 and no such notice is required to be issued to defendant No.1. However, that is a matter touching upon the merits of the case before the trial Court and the question which is required to be answered now is one of maintainability of the revision petition against such an order. What is obvious is, **the impugned order is not one of returning the plaint for presentation before a proper Court.**

8. Section 115 of CPC which is invoked for the purpose of filing the above revision petition reads as follows :

“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 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.”

9. Sub-Section (1) of Section 115 of CPC is very clear that a revision is maintainable only when no appeal lies against the impugned order.

10. The appeal against judgment and decree passed in original suits and orders passed in such suits can be maintained under Section 96 read with Order 41 of CPC or under Order 43 of CPC. In so far as the appeal under Section 96 of CPC is concerned, it is necessary to make a reference to the said Section. Section 96 is as follows :

“Appeal from original decree-

- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.
- (2) An appeal may lie from an original decree passed ex-parte.
- (3) No appeal shall lie from a decree passed by the Court with the consent of parties.

- (4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed (ten thousand rupees)”

11. There is absolutely no quarrel about the fact on either side that since the impugned order is one of returning the plaint for alleged want of statutory notice, to defendant No.1, no decree has resulted therefrom and accordingly no appeal can be maintained as against the impugned order under Section 96 of CPC.

12. The next question which arises is as to whether an appeal can be maintained under Order 43 of CPC. Order 43 reads as follows :

“ORDER XLIII

Appeals from Orders

1. Appeals from orders- An appeal shall lie from the following orders under the provisions of Section 104, namely:-

- (a) an order under Rule 10 of Order VII returning a plaint to be presented to the proper Court [except where the procedure specified in Rule 10-A of Order VII has been followed]
- (b) *****
- (c) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex-parte;
- (d) an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex-parte;
- (e) *****]
- (f) an order under Rule 21 of Order XI
- (g) *****]
- (h) *****]
- (i) an order under Rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under Rule 72 or Rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (ja) an order rejecting an application made under sub-rule (1) of Rule 106 of Order XXI, provided that an order on the original application, that is to say, the

application referred to in sub-rule(1) of Rule 105 of that Order is appealable;]

- (k) an order under Rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;
- (l) an order under Rule 9 of Order XXII giving or refusing to give leave;
- (m) *****]
- (n) an order under Rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;
- (na) an order under Rule 5 or Rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;]
- (o) *****]
- (p) Orders in interpleader-suits under Rule 3, Rule 4 or Rule 6 of Order XXXV;
- (q) an order Rule 2, Rule 3 Rule 6 of Order XXXVIII;
- (r) an order under Rule 1, Rule 2, [Rule 2-A], Rule 4 or Rule 10 of Order XXXIX;
- (s) an order under Rule 1 or Rule 4 of Order XL;

- (t) an order of refusal under Rule 19 of Order XLI to re-admit, or under Rule 21 of Order XLI to re-hear, an appeal;
- (u) an order under Rule 23 [or Rule 23-A] of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) *****];
- (w) An order under Rule 4 of Order XLVII granting an application for review.”

13. A bare perusal of the above provision shows that the impugned order is not one of returning the plaint to be presented to a proper Court and therefore, no appeal can be maintained against the impugned order under Order 43 of the Code.

14. The only point of controversy between the parties on either side is, while the petitioner asserts that the impugned order comes within the proviso to sub-Section (1) of Section 115 of CPC, and the revision petition is maintainable, the assertion of the respondents is that it is not so and revision petition, therefore, is not maintainable against the impugned order. The proviso to sub-Section (1) of Section 115 of CPC reads as follows :

“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)

(b)

(c)

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 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.”

15. A careful perusal of the proviso to sub-Section (1) of Section 115 of CPC makes it obvious that a revision petition can be maintained before the High Court and in such a revision petition, High Court can vary or reverse the order impugned before it only if the order under revision, if it had been made in favour of the revision petitioner would have

finally disposed of the suit or other proceedings. In other words, the condition precedent for the maintainability of a revision petition under CPC is that if the order which is called in question in the revision petition had been otherwise, that is if the order were to be in favour of the revision petitioner, it ought to have had the effect of disposing of the entire suit. In this particular case, the learned Court below has held that the petitioner has failed to issue statutory notice under Section 125 of the Karnataka Co-operative Societies Act, 1959 to defendant No.1 and therefore plaint was required to be returned. In order for the High Court to entertain a revision petition, the situation should have been that if the Court had accepted the contention of the petitioner herein and held the notice issued to defendant No.2 itself was sufficient, the effect of such order should have been to finally dispose of the suit. Such a finding by the learned trial Court would not have had the effect of finally disposing of O.S.No.51/2009 in this particular case. It is therefore quite clear that the impugned order is not revisable under Section 115 of CPC and as such, the present petition is not maintainable.

16. Hence, the following :

The above petition is rejected as not maintainable.

However, interim order which is in operation till today, shall continue for a period of fifteen days from today, in order to enable the petitioner herein to take such steps as is advised, to question the impugned order.

**Sd/-
JUDGE**

Mgn/-