

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

C. Rev. No. 103/2009
CMP No. 107/2009

Date of Decision:29.08.2011

Kapil Dev Singh. v. Raj Kumari.

Coram:

Mr. Justice J. P. Singh.

Appearing Counsel:

For Petitioner(s) : Mr. R. K. Bhatia, Advocate.

For Respondent (s) : Mr. D. K. Khajuria, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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The Petitioner-Kapil Dev Singh, defendant in respondent's suit for recovery of Rs.3,75,000/- along with interest @ 9% per annum, under Order 37 of the Code of Civil Procedure 1997, has invoked the Revisional jurisdictional of the Court seeking setting aside of Principal District Judge, Jammu's Order of July 06, 2009 rejecting, as barred by time, his Application to enter appearance in response to the Summons issued in the respondent's Suit.

The respondent-plaintiff raises objection to the maintainability of the petitioner's Revision pressing in service the Proviso appended to Section 115 of the Code.

Considered the submissions of learned counsel for the

parties and the case law cited at the Bar.

To determine the issue as to whether or not the petitioner's Revision was maintainable, reference needs to be made to the proviso introduced to Section 115 of the Code of Civil Procedure. It reads thus,

“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 proceedings, 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.”

A plain reading of the Proviso quoted hereinabove demonstrates the Legislative intent to curtail the power, which, prior to the introduction of the Proviso, stood vested in the High Court. The Phraseology employed in the Proviso leaves no manner of doubt that a party to a *l/s* may invoke the Revisional Jurisdiction of the High Court to seek setting-aside of an order made by any Court subordinate to the High Court, in the course of the Suit or other proceedings, only if the Order, sought to be questioned in the Revision, had been made in favour of the party invoking the Revisional jurisdiction, **it would have finally disposed of the Suit or other proceedings.**

In other words, by introducing the amendment to the provisions of Section 115 of the Code of Civil Procedure, the Legislature has disabled the parties to a *l/s* to approach the High Court in all such matters arising in a Suit or other

proceedings during its currency, which would not determine the suit or proceeding finally had the Order sought to be questioned, been passed in favour of the party applying for Revision.

The intention of the Legislature, therefore, appears explicit to ensure finality to proceedings in the Subordinate Court with expedition.

The petitioner's learned counsel's submission that those orders which were, *ex-facie*, bad in law or otherwise without jurisdiction or unwarranted, for one or the other reason, would still be amenable to the Revisional jurisdiction of the Court, regardless of the introduction of the proviso to Section 115 of the Code, based on ***Md. Motiur Rahman v. Mustt. Achia Khatoon and others***, reported as AIR 2003 Gauhati, 103, is found without merit in view of the legal position settled in ***Surya Dev Rai versus Ram Chander Rai and others***, reported as AIR 2003, Supreme Court, 3044.

I do not find merit in yet another submission of the petitioner's learned counsel that the expression "other proceeding" appearing in Section 115 would include ancillary and supplemental proceedings not connected with the progress of the Suit and culmination of such proceedings in favour of the party applying for Revision, if the order questioned in the Revision was set-aside, would not affect the maintainability of

the Revision Petition. This is so because the expression “other proceeding”, appearing in the proviso contemplates original proceedings other than Suits of Civil nature, such as execution proceedings, arbitration proceedings and such other proceedings under Original Jurisdiction in terms of the laws in force in the State; but not proceedings pursuant to the filing and during the course of the Suit.

The Order questioned by the petitioner in the Revision Petition, if set aside, would provide right to the petitioner to seek consideration of his Application for leave to defend the Suit, and would not terminate the proceedings in the Suit, hence the petitioner’s Revision is hit by the proviso appended to Section 115 of the Code of Civil Procedure.

The preliminary objection raised by the respondent, therefore, prevails and is, accordingly, allowed holding the petitioner’s Revision non-maintainable.

This Revision Petition is, therefore, dismissed.

**(J. P. Singh)
Judge**

JAMMU:
29.08.2011
Tilak, Secy.

