[2023] 12 S.C.R. 697 : 2023 INSC 861

RAHIMAL BATHU & OTHERS

v.

ASHIYAL BEEVI

(Civil Appeal No. 6232 of 2023)

SEPTEMBER 26, 2023

[PAMIDIGHANTAM SRI NARASIMHA AND MANOJ MISRA*, JJ.]

Issue for consideration: *Whether a revision u/s.115, CPC is maintainable against an order of the subordinate Court rejecting on merits an application for review of an appealable decree passed in a civil suit.*

Code of Civil Procedure, 1908 – s.115 – Exercise of revisional powers:

Held: *Exercise of revisional powers cannot be claimed as of right – It is a discretionary power – Revisional Court is not bound to interfere merely because any of the three conditions, as laid down in s.115 for exercise of such power, is satisfied – The Court, exercising revisional powers, must bear in mind, inter alia whether it would be appropriate to exercise such power considering the interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding, or by a suit, and the general equities of the case – Where an appealable decree has been passed in a suit, no revision should be entertained u/s.115 against an order rejecting on merits a review of that decree – The proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed – In the present case, the revision of the respondent-plaintiff against rejection of her application for review*

* Author

of an appealable decree ought not to have been entertained by the High Court – Impugned judgment and order of the High Court set aside. [Paras 21, 28 and 29]

Code of Civil Procedure, 1908 – Or. XLVII, rr.1, 4(2), 7; Or. XLIII, r.1(w):

Held: *From the provisions of Or.XLVII of the CPC it is clear that an order rejecting a review application is not appealable. [Para 19]*

Code of Civil Procedure, 1908 – s.115; Or. XLI, r.22 – Reasons for revisional court not to entertain a revision against an order rejecting on merits an application for review of an appealable decree – discussed.

Major S.S. Khanna v. Brig. F.J. Dillon **AIR 1964 SC 497 : [1964] SCR 409;** *DSR Steel Pvt. Ltd. v. State of Rajasthan* **(2012) 6 SCC 782 : [2012] 5 SCR 583;** *Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat* **(1969) 2 SCC 74 : [1970] 1 SCR 322 – relied on.**

Vinod Kumar Arora v. Smt. Surjit Kaur **(1987) 3 SCC 711 : [1987] 3 SCR 552;** *Srinivasiah v. Sree Balaji Krishna Hardware Store* **AIR 1999 SC 462;** *Kalpataru Agroforest Enterprises v. Union of India* **(2002) 3 SCC 692 : [2002] 2 SCR 298;** *The Managing Director (MIG) Hindustan Aeronautics Ltd. And another v. Arijit Prasad Tarway* **(1972) 3 SCC 195;** *Prem Bakshi v. Dharam Dev* **(2002) 2 SCC 2 : [2002] 1 SCR 103;** *Rajender Singh v. Lt. Governor; Andaman & Nocobar Islands & Others* **(2005) 13 SCC 289 : [2005] 3 Suppl. SCR 1042 – referred to.**

Punjab National Bank v. Shri U.P. Mehra **AIR 2004 Del. 135;** *B. Subbarao v. Yellala Maram Satyanarayana* **AIR 1961 AP 502;** *Arya Insurance Co. Ltd. v. Lala Channoolal* **AIR 1957 All 400;** *Thakur Singh v. Bhaironlal* **AIR 1956 Raj 113 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6232 of 2023.

From the Judgment and Order dated 12.09.2017 of the High Court of Judicature at Madras at Madurai in CRPNP No. 1342 of 2007.

A. Sirajudeen Sr. Adv., Ms. N. Annapoorani, Adv. for the Appellants.

V. Prabhakar, Ms. Jyoti Parashar, Nj Ramchandar, R. Gowrishankar, S. Rajappa, Advs. for the Respondent.

The Judgment of the Court was delivered by

MANOJ MISRA, J.

1. Leave granted.

2. This is defendants' appeal against the order of the Madurai Bench of Madras High Court (in short, 'the High Court'), dated 12.09.2017, passed in C.R.P. (NPD) (MD) No. 1342 of 2007, by which the revision of the plaintiff-respondent was allowed, the order dated 20.12.2006 passed by the court of First Additional Sub Court, Tirunelveli in I.A. No. 207 of 2001 in O.S. No. 276 of 1992 was set aside, I.A. No. 207 of 2001 was allowed and the decree dated 21.11.1996 passed in O.S. No. 276 of 1992 was modified.

Factual Matrix

3. The respondent instituted an Original Suit (in short, "O.S.") No. 276 of 1992 for declaring her as the exclusive owner of the property described in the second schedule of the plaint. Additionally, possession of the said property was sought. In the alternative, it was prayed that, if the court concludes that she is not the exclusive owner of the property, her share therein be declared one-sixth and the same be partitioned accordingly.

4. The plaint case is that,-- the suit property was of plaintiff's grandmother Fathima Beevi, which the plaintiff purchased from her *vide* sale-deed dated 14.11.1990; the first defendant (i.e., the appellant no.1) is the daughter-in-law of Fathima Beevi whereas defendant nos. 2 to 6 are her children; taking advantage of staying with Fathima Beevi, the husband of the first defendant, namely, Khaja Mohideen, got a gift-deed executed in his favour from Fathima Beevi on 24.04.1982; the said gift-deed was obtained by exercising undue influence and coercion and was never acted upon and is therefore a nullity. In the alternative, it was pleaded that, if the gift-deed is accepted, since the husband of the first defendant died on 31.05.1988 (i.e., before the death of his mother Fathima Beevi), Fathima Beevi had one-sixth share in the property which would come to the plaintiff under the sale-deed dated 14.11.1990.

5. The appellants, who were defendants in the suit, contested the suit on various grounds. On the pleadings of the parties, *inter alia*, following issues came up for consideration:

   (i) Whether the plaintiff is entitled to ownership and possession of the entire second schedule property or only a one-sixth share therein?

   (ii) Whether the gift-deed, dated 24.04.1982, was fraudulently obtained from Fathima Beevi and never acted upon?

   (iii) Whether the sale-deed dated 14.11.1990, executed by Fathima Beevi in favour of plaintiff, valid?

   (iv) Whether the property described in the second schedule belonged to Fathima Beevi on the basis of a Hiba executed by her father?

6. The trial court held that,-- the property concerned was gifted to Fathima Beevi by her father; the gift-deed dated 24.04.1982 executed by Fathima Beevi in favour of Kaja Mohideen (first defendant's husband) is invalid; the sale-deed dated 14.11.1990 in favour of the plaintiff is valid; and that the plaintiff is entitled to one-sixth share in the second schedule property. In terms thereof, the suit was decreed for one-sixth share in the suit property.

7. As the trial court found the gift-deed dated 24.04.1982 invalid and sale-deed dated 14.11.1990 valid, the plaintiff filed a review application (I.A. No. 207 of 2001), inter alia, claiming that the suit ought to have been decreed in its entirety and not for mere one-sixth share. This review application was rejected on merits by the trial court *vide* order dated 20.12.2006.

8. Aggrieved by rejection of the review application, the plaintiff (i.e. the respondent herein) filed civil revision before the High Court under Section 115 of the Code of Civil Procedure, 1908 (in short, 'the CPC').

9. The High Court entertained the revision and, by the impugned judgment and order dated 12.09.2017, allowed it. The High Court not only set aside the order of the trial court rejecting I.A. No. 207 of 2001 but it also allowed the review application and modified the decree dated 21.11.1996 in terms prayed for in the review application. In consequence, the decree of the trial court, which was in respect of one-sixth share only

in the second schedule property, was extended to the whole of it. The operative portion of the impugned order is extracted below:

"…consequently, the judgment and decree, dated 21.11.1996, passed in O.S. No. 276 of 1992, on the file of the Ist Additional Sub Court, Tirunelveli, are modified to the effect that the plaintiff is entitled for declaration that the second schedule property belongs to her absolutely and consequently, she is entitled to recover the possession of the same from the defendants…"

10. Aggrieved by the judgment and order of the High Court, the defendants are in appeal.

11. 11. We have heard Mr. A. Sirajudeen, learned senior counsel for the appellants and Mr. V. Prabhakar, learned counsel, for the respondents.

Submissions on behalf of the appellants

12. Learned counsel for the appellants submitted:

(i) The High Court exceeded its jurisdiction by entertaining a revision against an order which declined review of an appealable decree;

(ii) Assuming that the revision was maintainable, High Court could not on its own modify trial court's decree which was not the subject matter of challenge before the High Court;

(iii) If the trial court had committed any jurisdictional error in rejecting the review application, the High Court should have remitted the matter back to the trial court for a fresh consideration of the review application;

(iv) If the High Court's order is allowed to stand, defendants' right of an appeal under Section 96 of the CPC would get affected as the trial court's decree would get merged in the decree modified by the High Court.

13. On the strength of the aforesaid submissions, the learned counsel for the appellants prayed that the judgment and order of the High Court be set aside and if the plaintiff-respondent has any grievance against the judgment and decree of the trial court, she may take recourse to the remedy of an appeal under Section 96 of the CPC.

Submissions on behalf of the respondent

14. Per contra, the learned counsel for the respondents submitted:

(i) Against an order rejecting a review application, no appeal lies (See Order XLVII, Rule 7(1) of the CPC). The term "Case", used in Section 115 of the CPC, is a word of comprehensive import and includes civil proceedings other than the suit, therefore, there can be no legal bar in entertaining a revision against rejection of a review application;

(ii) The Explanation to Section 115 of the CPC makes it clear that "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding, which means that the expression "any case which has been decided" is all inclusive and not exclusive;

(iii) The revisional powers vested in the High Court under Section 115 of the CPC are wide enough to correct jurisdictional errors and while correcting such jurisdictional errors, the High Court can pass such orders as may be required to serve the ends of justice;

(iv) The concluding part of trial court's judgment on the basis whereof decree was drawn is contradictory to the body of the judgment, inasmuch as, if the gift deed dated 24.04.1982 is invalid and the sale-deed in favour of the plaintiff is valid, the plaintiff would be entitled to exclusive ownership and possession of the property in dispute. Thus, there was an error apparent on the face of the record which ought to have been corrected in the review. However, since it was not corrected, the High Court in exercise of its powers under Section 115 of the CPC was justified in modifying the decree.

15. To buttress his submission that the High Court justifiably exercised revisional power, the learned counsel for the respondent relied on several decisions enumerated and discussed below:

(i) ***Major S.S. Khanna v. Brig. F.J. Dillon[1];*** which we shall deal with at a later stage.

1 AIR 1964 SC 497

(ii) ***Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat***[2]. This is a decision which lays down the conditions in which revisional powers could be exercised and clarifies that if there are two modes of invoking the jurisdiction of the High Court and one of them is chosen and exhausted it would not be proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate Court. It holds that though Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction exercised thereunder is a part of the general appellate jurisdiction of the High Court as a superior Court. Therefore, the principle of merger of orders of inferior courts in those of superior Courts would be applicable.

(iii) ***Vinod Kumar Arora v. Smt. Surjit Kaur***[3]. This is a decision which deals with the general principles governing exercise of revisional powers. It does not deal specifically with any of the issues arising in this appeal.

(iv) ***Srinivasiah v. Sree Balaji Krishna Hardware Store***[4]. In this case it was held that where a Court proceeds to decide a case on an incorrect assumption regarding a fact, there would be ample justification to exercise the review jurisdiction.

(v) ***Kalpataru Agroforest Enterprises v. Union of India***[5]. Herein, this Court found Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989, to the extent it restricted the scope of power of review vested under Section 18(3)(f) of the Railways Claims Tribunal Act, 1987 to non-appealable orders, violative of statutory provision and, therefore, bad.

(vi) ***The Managing Director (MIG) Hindustan Aeronautics Ltd. And another v. Arijit Prasad Tarway***[6]. In this case it was held that the High Court had no jurisdiction to interfere with the order of the first appellate court while exercising power under Section of 115

2 1969 (2) SCC 74

3 (1987) 3 SCC 711

4 AIR 1999 SC 462

5 (2002) 3 SCC 692

6 (1972) 3 SCC 195

of the CPC. It was observed that the order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but it had jurisdiction to make that order, therefore, the High Court could not have invoked its jurisdiction under Section 115 of the CPC.

(vii) ***Prem Bakshi v. Dharam Dev***[7]. In this case it was held that an order by trial court holding it has no jurisdiction to proceed, or that suit is barred by limitation, would amount to a final decision and as such revisable.

(viii) ***Rajender Singh v. Lt. Governor; Andaman & Nocobar Islands & others***[8]. In this case it was observed that the power of judicial review of its own order inheres in every court of plenary jurisdiction to prevent miscarriage of justice; and courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands.

(ix) ***Punjab National Bank v. Shri U.P. Mehra***[9]. In this case the order of which review was sought had the effect of closing defendant's evidence. The review was dismissed. Challenging the aforesaid two orders, revision under Section 115 of the CPC was filed which was dismissed upon finding that there was no jurisdictional flaw in the order of the trial court.

(x) ***B. Subbarao v. Yellala Maram Satyanarayana***[10]. In this case the plaintiff sought permission to sue as a pauper. On rejection of his prayer, he filed a review application. Against rejection of that review application, he filed a revision under Section 115 of the CPC. While rejecting the objection that revision is not maintainable against an order rejecting a review application, the High Court held that as there is no right of an appeal against rejection of a review application, the jurisdiction under Section 115 of the CPC can be invoked.

7 (2002) 2 SCC 2

8 (2005) 13 SCC 289

9 AIR 2004 Del. 135

10 AIR 1961 AP 502

(xi) ***Arya Insurance Co. Ltd. v. Lala Channoolal***[11]. In this case it was held by the Allahabad High Court that the CPC does not provide for an appeal against refusal of a review though an appeal under Order XLIII, Rule 1(w) from an order granting a review is maintainable. However, an order rejecting the review may be brought into question in a revision.

[**Note:** In this case the order of which review was sought was not a decree but an order striking off defence and directing the suit to proceed ex parte.]

(xii) ***Thakur Singh v. Bhaironlal***[12]. In this case an ex parte decree was passed in a suit. Instead of filing an appeal or an application to set aside the ex parte decree a review was filed, which was rejected. Against rejection of the review, a revision was filed. Although the revision was dismissed but, while deciding the same, preliminary objection as to its maintainability was overruled.

DISCUSSION

16. We have considered the rival submissions and have perused the record.

17. The short question which arises for our consideration in this appeal is:

Whether a revision under Section 115 of the CPC is maintainable against an order of the subordinate Court rejecting on merits an application for review of an appealable decree passed in a civil suit?

18. To appropriately address the aforesaid issue, it would be apposite to have an overview of the relevant provisions of the CPC. An application seeking a review of a judgment and decree passed in a civil suit is maintainable under Order XLVII Rule 1 of the CPC. Rule 4 of Order XLVII provides that where it appears to the Court that there is not sufficient ground for a review, it shall reject the application. Sub rule (2) of Rule 4 provides that where the Court is of opinion that the application for review should be granted, it shall grant the same. Rule 7 of Order XLVII provides that an order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an

11 AIR 1957 All 400

12 AIR 1956 Raj 113

appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit. In fact, Order XLIII Rule 1 (w) supplements Order XLVII Rule 7 by providing that an appeal would lie against an order under Rule 4 (2) of Order XLVII granting an application for review. Rule 9 of Order XLVII provides that no application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

19. From the provisions of Order XLVII of the CPC it is clear that an order rejecting a review application is not appealable.

20. In ***Major S.S. Khanna (supra)***, in a civil suit an issue was framed as to whether the suit was maintainable. The said issue was tried as a preliminary issue. The trial court held the suit not maintainable. Against the order of the trial court, a revision was preferred before the High Court under Section 115 of the CPC. The High Court of Punjab set aside the order and directed that the suit shall be heard and disposed of according to law. Aggrieved by the order of the High Court, a Special Leave Petition was filed before this Court. Before this Court it was urged: (a) that the order under challenge before the High Court did not amount to "a case which has been decided" within the meaning of Section 115 of the CPC; (b) that the decree which may follow would be subject to an appeal to the High Court therefore, the power of the High Court was, by the express terms of Section 115 of the CPC, excluded; and (c) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115 of the Code. In that context, this Court observed:

"6……The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

"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."

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of "any case which has been decided". The expression "case" is not defined in, the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : *Balakrishna Udayar v. Vasudeva Aiyar* [LR 44 IA 261]; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a "case which has been decided", there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court. One view which is accepted by a majority of the High Courts is that the expression "case" includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal. The other view is that the expression "case" does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a "case which has been decided", and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.

7. An analysis of the cases decided by the High Courts — their number is legion — would serve no useful purpose. In every High Court from time to time opinion has fluctuated. The meaning of the expression "case" must be sought in the nature of the jurisdiction conferred by Section 115, and the purpose for which the High Courts were invested with it.

Xxxxxx xxxxxxxx xxxxxxxx xxxxxxxxx

10. The expression "case" is a word of comprehensive import; it Includes civil proceedings other than suits, and is not restricted by anything

contained in the section to the entirety of the proceeding in a civil court. To interpret the expression "case" as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence which the jurisdiction to issue writs, and the supervisory jurisdiction are not subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice.

11. It may be observed that the majority view of the High Court of Allahabad in *Buddhulal v. Mewa Ram* [ILR 43 All 564 FB] founded upon the supposition that even though the word "case" has a wide signification the jurisdiction of the High Court can only be invoked from an order in a suit, where the suit and not a part of it is decided, proceeded upon the fallacy that because the expression "case" includes a suit, in defining the limits of the jurisdiction conferred upon the High Court the expression "suit" should be substituted in the section, when the order sought to be revised is an order passed in a suit. The expression "case" includes a suit, but in ascertaining the limits of the jurisdiction of the High Court, there would be no warrant for equating it with a suit alone.

(Emphasis supplied)

After observing as above, in paragraph No.12, it was observed:

"12. That is not to say that the High Court is obliged to exercise its jurisdiction when a case is decided by a subordinate Court and the conditions in clauses (a), (b), or (c) are satisfied. Exercise of the jurisdiction is discretionary : the High Court is not bound to interfere merely because the conditions are satisfied. The interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding or by a suit, and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist, should exercise its jurisdiction."

(Emphasis supplied)

21. The law laid down in ***Major S.S. Khanna (supra)*** by a three-Judge Bench of this Court still holds the field. Thus, it is settled that the expression "case" used in Section 115 of the CPC is of wide amplitude. It includes

civil proceedings other than suits, and is not restricted to the entirety of the proceeding in a civil court. In that sense, rejection of a review application would also be a case which has been decided and, therefore, it could be canvassed that as no appeal lies against such an order, the same is amenable to the revisional jurisdiction under Section 115 of the CPC. However, at the same time, it cannot be overlooked that exercise of revisional powers cannot be claimed as of right. It is a discretionary power. The revisional Court is not bound to interfere merely because any of the three conditions, as laid down in Section 115 of the CPC for exercise of such power, is satisfied. Rather, the Court, exercising revisional powers, must bear in mind, inter alia, whether it would be appropriate to exercise such power considering the interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding, or by a suit, and the general equities of the case.

22. In ***Major S.S. Khanna (supra)*** the order impugned before the revisional court was an order by which the trial court while deciding a preliminary issue held the suit as not maintainable though, the suit itself was not decided. Therefore, there was no appealable decree in existence at the time when the revisional jurisdiction was invoked. Whereas, in the case at hand there was already an appealable decree in existence when the revisional powers were invoked. In fact, the review application sought review of an appealable decree and not just a mere order that might have been passed by the court in the course of a suit. The revision was filed against rejection of that review application. At that stage, when the review application was rejected, the aggrieved party had a right to question the decree of the trial court in an appeal. In these circumstances, the question that needs determination is, whether, against an order of the Subordinate Court rejecting on merits an application for review of an appealable decree, a revision be entertained.

23. In ***DSR Steel Pvt. Ltd. v. State of Rajasthan***[13], this Court had the occasion to examine different situations which may arise in relation to orders passed in a review petition. While dealing with those situations, it was observed:

13 (2012) 6 SCC 782

"25.1. One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

(Emphasis supplied)

24. What is clear from the above observations is, that where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

25. Apart from above, there is another reason also for a revisional court not to entertain a revision against an order rejecting on merits an application for review of an appealable decree, which is, if the revisional court sets aside or modifies or alters a trial court's decree, the decree of the trial court would merge in the one passed by the revisional court. In consequence, the right of the party aggrieved by the trial court's decree to file an appeal would get affected. Further, there may be a case where a person is aggrieved by a finding of the trial court on any issue, even though the trial court's decree may be in its favour. In that scenario, if there is an appeal by a party aggrieved by the decree, that person would have a right to take an objection against the adverse finding with the aid of the provisions of Order XLI, Rule 22 of the CPC, but in the event of there being no appeal against the decree, such a person would lose its right to take an objection, under Order XLI, Rule 22 of the CPC, against that adverse finding.

26. No doubt revisional powers may be available on limited grounds, primarily to correct jurisdictional errors, but still it is a part of the general appellate jurisdiction of the High Court as a superior court. In **Shankar Ramchandra (supra),** this Court observed:

> **"6.** Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal."
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> **(Emphasis supplied)**

27. In the instant case, the trial court, which had jurisdiction to allow or dismiss the review application, dismissed the review application on merits. If it had granted the review, the aggrieved party would have had a right to file an appeal under Order XLIII Rule 1 (w) read with Order XLVII Rule 7 of the CPC. And if it had allowed the review and simultaneously altered/modified/reversed the decree, the aggrieved party would have had a right to file an appeal against the said decree. But, if the revisional court does the same, as has been done by the High Court while passing the impugned order, an anomalous situation would arise. The decree passed by the trial court would stand modified by the High Court. Therefore, if the defendant(s) against whom the decree is passed were to challenge the same, they would be at a disadvantage on account of the merger. Whereas, from the stand point of the plaintiff-respondent, even if we assume that the trial court's decree is inconsistent with its finding on the validity of the gift in favour of Khaja Mohideen, she can challenge the same in an appeal against the decree even after rejection of the review application. In the event of such an appeal by the plaintiff, the defendant(s), even if they had themselves not filed an appeal against the trial court's decree, would have a right to take objection to the adverse finding(s) under Order XLI Rule 22 of the CPC. However, if the revisional court's order is allowed to stand, owing to modification of the decree by the revisional court, to which in normal course an appeal would lie, the

right of an appeal to the aggrieved party would get seriously prejudiced.

28. For all the reasons above, we are of the considered view that where an appealable decree has been passed in a suit, no revision should be entertained under Section 115 of the CPC against an order rejecting on merits a review of that decree. The proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed.

29. In view of our conclusion above, the revision of the respondent against rejection of her application for review of an appealable decree ought not to have been entertained by the High Court. The appeal is, therefore, allowed. The impugned judgment and order of the High Court is set aside.

30. However, this will not affect the right of the plaintiff/respondent to file an appeal against the decree of the trial court along with an application to condone the delay, if any, in filing the appeal. Parties to bear their own costs.

Headnotes prepared by : Divya Pandey

Result of the case :
Appeal allowed.