

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

AND

HON'BLE SRI JUSTICE RAVINDRA MAITHANI

WRIT PETITION (M/S) NO. 476 OF 2023

14TH JUNE, 2023

BETWEEN:

Bright Angels Educational Society & anotherPetitioners.

And

Shri Rakesh Tomar & othersRespondents.

Counsel for the Petitioners : Mr. Siddhartha Singh and Mr. Kshitij Sah, learned counsels.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard Mr. Singh, learned counsel for the petitioners.

2. *Vide* order dated 23.02.2023, the present reference was made to the Larger Bench. The said order reads as follows:-

"The present writ petition, under Article 227 of the Constitution of India, has been preferred by the petitioners to assail the order dated 13.02.2023, passed by the Court of the Senior Civil Judge, Vikasnagar, Dehradun, in O.S. No.25 of 2023.

2. By the impugned order, the learned Senior Civil Judge has refused to pass an ex parte interim injunction order on the petitioners' (who are the plaintiffs in the Suit) application for injunction against the respondents-defendants. Notice has been issued to the defendants for filing of their objections, returnable on 13.03.2023.

3. Learned counsel for the petitioners submits that the present writ petition, under Article 227 of the Constitution of India, is maintainable. In this regard, he submits that no appeal is maintainable under Order 43 Rule 1(v) of the CPC, as no order

granting, or refusing to grant interim injunction has been passed. He also places reliance on the judgment of the Division Bench of the Allahabad High Court in **Ram Dhani & others vs. Raja Ram & others, 2011 (2) ARC 465**, wherein the Division Bench of the Allahabad High Court held that a revision under Section 115 of the Code of Civil Procedure would not be maintainable against an order of issuance of notice to the defendants, before grant of an injunction. Thus, the only remedy available to the petitioners is under Article 227 of the Constitution of India.

4. Learned counsel submits that the basis of the said decision is the language of Section 115 of CPC, as is applicable in the State of Uttar Pradesh. He submits that the language of Section 115 of CPC, as applicable in the State of Uttarakhand, is *pari materia* with that as applicable in the State of Uttar Pradesh.

5. Section 115 (1) of CPC, as applicable in the State of Uttarakhand, reads as follows:-

"Section 115. Revision. (1) A superior court may revise an order passed **in a case decided** in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has-

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of its jurisdiction illegally or with material irregularity. (emphasis supplied)"

6. It appears that the revision has been held to be not maintainable on account of the use of words "in a case decided" in Section 115(1) of CPC, as applicable to the State of Uttar Pradesh, and also as applicable to the State of Uttarakhand.

7. To me, it appears, that the said words are a surplusage, and are liable to be ignored. I say so, because if Section 115(1) of CPC were to be read literally, while giving the said words "in a case decided", their literal meaning, it would follow that revision would be maintainable only once the Original Suit or other proceeding is decided, and that no revision would be maintainable against an interlocutory order passed in an Original Suit, or other proceeding, even though, the conditions laid down in clauses (a), (b), and (c) of Section 115(1) of CPC are satisfied in respect of an order passed during the pendency of the Original Suit or other proceeding.

8. Moreover, it would also mean that there would be two parallel remedies available against an interlocutory order after the Original Suit or other proceeding is finally decided, i.e. (i) under

Section 96 read with Section 105 of CPC, and; (ii) under Section 115 of CPC, as applicable to the State of Uttarakhand, if the conditions of clauses (a), (b) and (c) of Section 115(1) of CPC are satisfied. It appears to me, that the legislative intent could not have been to provide two different and parallel remedies against the same order, while, also completely denying the remedy provided under Section 115 of CPC, as originally framed.

9. The State amendment, if literally read, has the effect of completely destroying the remedy provided under Section 115 of CPC as framed by the Parliament. Could the State legislature have carried out an amendment in Section 115 of CPC, which has the effect of completely destroying it- is the issue which requires consideration. Pertinently, Entry 13 of List III- Concurrent list is "Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration." The Code of Civil Procedure is a Central enactment. Prima facie, the State amendments cannot have the effect of destroying the provision of the Central enactment.

10. I am, therefore, of the view that the interpretation of Section 115 of CPC, as applicable to the State of Uttarakhand, is an important issue having wide ramifications, which requires due consideration. I, therefore, refer this issue to a larger Bench of three Judges for its consideration.

11. Considering the fact that no ex parte ad interim order of injunction is granted to the petitioners, and the proceedings are now fixed before the learned Senior Civil Judge on 13.03.2023, I direct the learned Senior Civil Judge to proceed to hear the application of the petitioners/ plaintiffs for injunction on the said date, i.e. 13.03.2023, and not to adjourn the proceedings for hearing on the said application any further. I, however, make it clear that I have not examined the merits of the petitioners' case, and this order shall not be construed as an expression of opinion in the matter, one way or another.

12. List this case before the larger Bench on 12.04.2023."

3. Mr. Singh has submitted that, while making the reference, the Chief Justice has proceeded on the basis that the words "*in a case decided*", in Section 115 of the Code of

Civil Procedure, as applicable to the State of Uttarakhand, would, if literally construed, would mean an order which finally decides the entire proceeding/ Suit. However, he points out that the expression "case decided" is not limited to the final decision of a Suit or proceeding, and in that regard, he has, firstly, drawn the attention of the Court to the *Explanation* to Section 115, as framed by the Parliament, which reads as follows:-

"Explanation.- In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceedings".

4. He has also referred to the judgment of the Supreme Court, in the case of **Major S.S. Khanna v. Brig. F.J. Dillon, AIR 1964 SC 497**, wherein the Supreme Court considered Section 115 of the CPC, and squarely dealt with the issue as to what is the meaning of the expression "case decided". The Supreme Court observed in the said judgment in Paragraph Nos.11 and 12 as follows:-

"11. 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.

*12. It may be observed that the majority view of the High Court of Allahabad in **Buddhulal v. Mewa Ram, ILR 43 All 564** 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".

5. We may observe that in the amended Section 115, as applicable to the State of Uttarakhand, the *Explanation*, which is found in Section 115 of the Central Enactment, is missing. However, the expression "*case decided*", has been considered by the Supreme Court in ***Major S.S. Khanna*** (supra), and in the light of the interpretation returned by the Supreme Court, it is clear to us that the expression "*case decided*" cannot be literally construed.

6. We may also refer to the judgment of the Supreme Court in ***Baldevdas Shivlal & Another v. Filmistan Distributors (India) P. Ltd. & Others, 1969 (2) SCC 201***, wherein the Supreme Court has held that the expression 'case' is not limited in its import to the entirety of the matter in dispute in an action. The said word is a word of comprehensive import, and includes civil proceedings other than suits, and is not restricted- by anything contained in Section 115 of the CPC, to the entirety of the proceeding in a civil court. A case may be said to be decided, if the court

adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of Section 115 of the CPC”.

7. In the light of the aforesaid, we are of the view that the issue, which has been referred for consideration by the Larger Bench, does not really arise, as the words “case decided”, cannot be construed literally. These words have to be understood, as explained by the Supreme Court in **Major S.S. Khanna** (supra) and **Baldevdas Shivlal** (supra).

8. The reference is answered accordingly.

9. The petition be listed before the Bench, as per roster, on 27.06.2023.

(VIPIN SANGHI, C.J.)

(MANOJ KUMAR TIWARI, J.)

(RAVINDRA MAITHANI, J.)

Dated: 14th June, 2023

NISHANT