

2022 LiveLaw (SC) 864

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., KRISHNA MURARI; J.**

October 13, 2022

CIVIL APPEAL NO. 7266 OF 2022 (Arising out of SLP (C) 14102/2022)

RAJ SHRI AGARWAL @ RAM SHRI AGARWAL AND ANR. *versus* SUDHEER MOHAN AND ORS.

Constitution of India, 1950; Article 227 - Code of Civil Procedure, 1908; Section 115 - Appeal against HC order dismissing writ petition under Article 227 on the ground of availability of remedy of revision under Section 115 CPC - Allowed - Where there is availability of remedy under Section 115 CPC normally the petition under Article 227 would not lie - But that does not mean that writ petition under Article 227 shall not be maintainable at all - There is a difference and distinction between the entertainability and maintainability - The High Court ought to have converted the writ petition under Article 227 into revision petition under Section 115 CPC and ought to have considered the same in accordance with law and on its own merits, rather than permitting the writ petitioners to file a fresh revision application under Section 115 of the CPC. It would unnecessary increase the burden of the Court. (Para 3-4)

Constitution of India, 1950; Article 227 - The remedy under Article 227 available is a constitutional remedy under the Constitution of India which cannot be taken away - In a given case the Court may not exercise the power under Article 227 if the Court is of the opinion that the aggrieved party has another efficacious remedy available under the CPC. However, to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable. (Para 3)

For Appellant(s) Mr. Gaurav Agarwal, Adv. Ms. Shristi Gupta, Adv. Mr. Sanjeet Paliwal, Adv. Mr. S.K. Garg, Adv. Ms. Vijay Rani, Adv. Mr. Shashank Singh, AOR

For Respondent(s) Ms. Ankita Gupta, Adv. Mr. Kushagra Pandey, Adv. Mr. Ashutosh Pande, AOR

ORDER

- 1) Leave granted.
- 2) Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.04.2022 passed by the High Court of Judicature at Allahabad dismissing the writ petition preferred by the appellants, filed under Article 227 of the Constitution of India, challenging the order passed by the learned trial Court dismissing the application under Order 6 Rule 17 CPC, the original revisionist has preferred the present Appeal.
- 3) By the impugned judgment and order, the High Court has dismissed the writ petition, under Article 227 of the Constitution of India, observing that the writ petition, under Article 227 of the Constitution of India, is not maintainable as remedy by way of revision under Section 115 CPC is available to the appellants/plaintiffs. As observed by this Court in catena of decisions and even in the decisions considered by the High Court, the view taken by this Court is that where there is availability of remedy under Section 115 CPC normally “*the petition under Article 227 of the Constitution of India would not lie*”. That does not mean that writ petition, under Article 227 of the Constitution of India, shall not be maintainable at all. There is a difference and distinction between the entertainability and maintainability. The remedy under Article 227 of the Constitution of India available is a constitutional remedy under the Constitution of India which cannot be taken away. In a given case the Court may not exercise the power under Article 227 of the Constitution of India if the Court is of the opinion that the aggrieved party has another efficacious remedy available under the CPC.

However, to say that the writ petition under Article 227 of the Constitution of India shall not be maintainable at all is not tenable.

4) Even otherwise, it is required to be noted that, even according to the High Court, the remedy available to the original plaintiffs was under Section 115 of the CPC. In that view of the matter, the High Court ought to have converted the writ petition under Article 227 of the Constitution of India into revision petition under Section 115 CPC and ought to have considered the same in accordance with law and on its own merits, rather than permitting the writ petitioners to file a fresh revision application under Section 115 of the CPC. It would unnecessary increase the burden of the Court. To avoid further multiplicity, even the High Court ought to have converted the writ petition under Article 227 of the Constitution into revision under Section 115 of the CPC.

5) In view of the above and for the reasons stated above, the present Appeal succeeds. The impugned judgment and order passed by the High Court dismissing the writ petition, under Article 227 of the Constitution of India, on the ground that the same shall not be maintainable is hereby quashed and set aside. The matter is remanded to the High Court to consider the writ petition in accordance with law and on merits for which we have not expressed anything on merits in favour of either parties.

The present Appeal is allowed to the aforesaid extent. No costs.

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