

THE HIGH COURT OF MADHYA PRADESH

R.P. No.1332/2018

(Northern Coal Fields Limited & others vs M/s Sainik
Mining Allied Services Limited)

JABALPUR,

DATED : 12-09-2018

Shri Greeshm Jain, Advocate for the applicants.

Shri V.S.Shroti, Senior Advocate with Shri Sourabh
Soni, Advocate for the non-applicant.

With the consent of learned counsel for the parties,
the matter is heard finally.

This review petition has been filed by the
applicants/defendants for review of the order dated
03.07.2018 passed by this Court in W.P. No.12016/2017
(M/s Sainik Mining Allied Services Limited vs. Northern
Coal Fields Limited and others).

2. The aforesaid writ petition was filed by the non-
applicant/plaintiff under Article 227 of the Constitution
of India against the order dated 05.07.2017 passed in
Civil Suit No.13-A/2014 by the First Additional District
Judge, District Singrauli whereby the learned Judge of
the Trial Court has dismissed the application filed by the
non-applicant/plaintiff under Order 7 Rule 11(a) (d) of

CPC and has taken the counter claim of the applicants/defendants on record.

3. Learned counsel for the applicants has submitted that the present review petition has been filed only on the ground that the applicants had also raised an objection regarding the maintainability of the petition on the ground of availability of alternative remedy in the form of civil revision as the impugned order in the writ petition was passed under Order 7 Rule 11 of CPC which was revisable. The counsel has further submitted that in this regard i.e. the non-maintainability of the writ petition, the averments were also made in the reply filed by the applicants in the said petition. The counsel has relied upon the decision of the Supreme Court in the case of **Parsion Devi and others Vs Sumitri Devi and others (1997) 8 SCC 715**.

4. Shri V.S.Shrotri, learned senior counsel for the non-applicant on the other hand has submitted that no illegality has been committed by this Court in passing the aforesaid order as even otherwise this Court has rightly exercised its jurisdiction under Article 227 of the Constitution of India because even if the non-applicant/plaintiff's objection under Order 7 Rule 11 of

CPC had been allowed by the learned Judge of the Trial Court, the suit would still have continued and as such the mischief of Section 115 of CPC that if the application filed by the party respondent is allowed in that case had it been made in favour of the said party it would have finally disposed of the suit or other proceedings could not be attracted in the present case. Thus, it is submitted that in the present case, admittedly the application was filed by the non-applicant/petitioner/plaintiff against the counter claim of the respondents/defendants and had it been allowed it would only have precluded the defendants from filing the counter claim and as such the proceeding would still have continued. Shri Shroti, learned senior counsel has relied upon the decision of the Supreme Court in the case of **Surya Dev Rai vs Ram Chander Rai and others, (2003) 6 SCC 675**; as also the decisions of this Court in the case of **Johra Bi and others vs Jageshwar and others, 2010(1) MPLJ 98**, and **Shaligram vs Nagar Palika, Vidisha, 2004(3) MPLJ 29**. In view of the same it is submitted that the petition being devoid of merits is liable to be dismissed.

5. Heard learned counsel for the parties and perused the record.

6. The sole question for the determination by this Court is whether the aforesaid order passed by the learned Trial Court on 05.07.2017 was revisable or the petition was rightly filed by the non-applicant/plaintiff. At this juncture it would be apt to refer Section 115 of CPC which reads as under :-

“**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 a 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.”

(emphasis supplied)

7. In the considered opinion of this Court, the order was certainly passed in the civil suit itself in respect of an application filed for counter claim by the defendants of the suit under Order 8 Rule 6A of CPC and it cannot be said that the counter claim's proceedings, which had not even commenced at that time, were a separate proceeding in the aforesaid suit. A close reading of Section 115 of CPC would reveal that its proviso refers to the final disposal of the *suit or other proceedings* in which the application has been filed which is also a clear indication of the fact that the intention of the legislature was total disposal of the suit or the other proceeding in which such application is filed. The counter claim to a suit cannot be said to be another proceeding unconnected with the suit specially when its maintainability itself is in question.

8. So far as the judgment cited by the applicants is concerned, in the considered opinion of this Court, the same is distinguishable and has no application in this case. In the case of **Parsion Devi** (supra), the issue was of the scope of the review application but even relying upon the said judgment, this Court does not find any

error on the face of record to entertain the review application.

9. In the case of **Surya Dev Rai** (supra) as also in the case of **Johra Bi** (supra) relied on by the learned senior counsel for the non-applicant, it is held that the power of High court conferred under Article 227 of the Constitution is always in addition to the revisional jurisdiction conferred on it but even the said judgment is not relevant in the present case as this court has no doubt that the writ petition was maintainable and has been rightly entertained by this court.

10. In the circumstances, this Court finds that no illegality has been committed by this Court in entertaining writ petition which was maintainable. Thus, the review petition being devoid of merit is hereby **dismissed** with a cost of Rs.5000/- (Rupees Five Thousand) to be paid by the applicants to the non-applicant within a period of 15 days from the date of receipt of certified copy of this order by the trial Court.

(Subodh Abhyankar)
Judge