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Unit –I: Judgment and Decree

A) Judgment

DEFINITION

Judgment is defined u/s 2 (9) of the Civil Procedure Code. It means the statement given by the Judge on the grounds of a Decree or Order. Thus a judgment sets out the ground and the reason for the Judge to have arrived at the decision.

Judgment is the decision of a court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination – **State of Tamilnadu V. S. Thangaval.**

Judgment is the statement of the Court on the grounds for having arrived at a decision.

ESSENTIALS AND CONTENTS OF JUDGMENT:

A judgment must contain the following components:

1. A crisp statement of facts of the case;

2. The points or issues for determination;

3. The decision on such issues and finally;

4. The reasons for such a decision.

PROUNOUNCEMENT OF JUDGMENT:

Rule 1 of Order 20 deals with the pronouncement of judgment. It talks of specific time frame for the declaration of the judgment in the open court. But there was no time limit prescribed for the pronouncement of judgment prior to the amendment in 1976 which led to a persistent demand all over India for the imposition of a reasonable time frame for the declaration of judgment after the hearing of the case gets over . In this regard, observation of the Supreme Court in R.C. Sharma v. Union of India is worth noting;

The Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It

is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is the litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done.

Accordingly amendment was introduced providing a time limit for the declaration of the judgment. If it is not possible to pronounce the judgment at once, it should be declared within thirty days from the day of conclusion of the hearing and in case some extreme situation arises then the provision is also there to extend this declaration of pronouncement till the sixtieth day from the conclusion of hearing. Thus judge have a discretionary power for the pronouncement of judgment for these sixty days but after that declaration becomes mandatory on the part of the judge.

But what happens if the judgment is not pronounced within sixty days also. Supreme Court has strongly deprecated the action of the High Court in the case of AnilRai v. State of Bihar ,where the judgment was pronounced after two years. Remarks of the honourable court in this case are just next to the truth and are worth noting down:

The Constitution did not provide anything when High Court judges do not pronounce judgments after lapse of several months presumably because the architects of the Constitution believed that no High Court judge would cause long and distressing delays. Such expectation of the makers of the Constitution remained faultless during the early period of the post Constitution years. But unfortunately, the later years have shown slackness on the part of a few judges of the superior Courts in India with the result that the records remain consigned to hibernation. Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the judges forget even the fact that such a case is pending with them expecting judicial verdict.

This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. A long delay in delivering the judgment gives rise to unnecessary speculation in the minds of parties to a case.

Excessive delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. Any procedure or course of action which does not ensure a reasonable quick adjudication has been termed to be unjust.

In a country like ours where people consider the judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eye-brows, some time genuinely which, if not checked, may shake the confidence of the people in the judicial system.

Thus declaration of judgment within reasonable time is highly inevitable. In order to raise the standard of the court in this regard certain guidelines has also been given in the Anil Rai's case. These guidelines are given below:

The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, the judgment and date of pronouncing it be separately mentioned by the Court officer concerned.

The Chief Justices of the High Courts should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter.

Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said list shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.

ALTERATION IN JUDGMENT:

Before the pronouncement of judgment, every right is with the judge to change his mind but the dilemma arises in the situation when judgment has been declared in the open court and after that something strikes to the judge which prompts him to alter the judgment; so the question arises will the changed mind frame should be given prevalence over the old decision or old should be preserved from the new one? Rule 3 of Order 20 of C.P.C. provides that a judgment once signed cannot be amended or altered afterwards except to correct clerical or arithmetical mistakes or errors due to accidental slips or omissions as mentioned in section 152 of the C.P.C. or on review.

According to Allahabad High Court in SangamLal v. Rent Control and Eviction Officer, a judgment dictated in an open court can be changed, even completely, before it is signed provided notice is given to all parties concerned and they are heard before the change is made. Reasoning given for this judgment was that they do not want to construe the rules too technically as they are indeed rules to further the ends of justice; so they should not be viewed too narrowly. Basically judgment is the final decision of the court intimated to the parties and to the world at the large in an open court. This declaration is the intention of the mindset of the court after going through the tedious process of the wholesome hearing. This intention of the court is the final operative decision of the court which constitutes the decision. Regarding this, the Gujarat High Court in the case of Ishwarbhai mentions some worthwhile remarks. It says that, as soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for

the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is any irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently consequent on acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of this subsequent authentication.

The court can do some formal corrections but the core of it cannot be altered or changed so as to modify the order or amend or even set at naught the same. That can be done only by the Court in appeal or in revision. Even with the consent or agreement of the parties also, a judgment cannot be altered or amended.

Reasoning for Decision

Before starting anything, it is very necessary to lay down the ground; before judging also something, it is quite crucial to have full facts before it and then take out the relevant portions to make a concise statement of the case. Thus, a judgment should inaugurate with the facts of the case in brief. Rule 4(2) of Order 20 of C.P.C. states that apart from the judgment of Small Cause Courts, judgments of all other Courts shall contain a concise statement of the case; the points for determination; the decision thereon; and the reasons for such decision.

Thus after laying down the facts, facts in issue should be settled by bringing out the claims which are disputed between both the parties; thus issues should be framed. Framing of issues should be done via Rule 1 of Order 14 of C.P.C.

Now after issues are framed, points for determination come into picture and for determining those points, need for extra force is required. It is not possible to cruise through the disputed facts in the absence of any peaceful land. In order to satisfactorily reach on a judicial determination of a disputed claim where substantial questions of law or fact arise, it has to be supported by the most cogent reasons; a mere order deciding the matter in dispute without any reasoning is no judgment at all Power of reasoning is needed to back up the decision on each issue given by the court under Rule 5 of Order 20 of this Code. Rule 2 of Order 14 of C.P.C. provides judgment to be given on all the issues that has arisen in the given case. Rule 1 of the same Order provides for framing of issues with the object of keeping the various points arising for decision separate and distinct and to avoid the confusion later on.

As per Rule 5 of Order 20 of C.P.C. court has to state its decision with reasons on each issue separately unless the finding upon any one or more of the issues is sufficient for the decision of the suit. But Rule 2 of Order 14 of C.P.C. requires that a court should decide on all issues even if the case can be decided by settling few issues only except where a pure question of law relating to jurisdiction or bar to suit is involved. Further with the addition of an explanation to Rule 22 of Order 41 of C.P.C. which empowers a respondent in appeal to file cross objection in respect of findings against him in a decree notwithstanding that by reason of the decision of the court on any other finding which is sufficient for the decision of the suit the decree is wholly or in part in

favour of the respondent, the intention of the legislature is clear that the court will now have to decide and state its findings on all the issues even if it considers that finding for one or only few issues is sufficient for the disposal of the case. Thus in order to have a harmonious construction of all these rules, it would be judicial to amend the Rule 5 of Order 20 of C.P.C. by omission of the words unless the finding upon any one or more of the issues is sufficient for the decision of the suit **a**t the end . Moreover, principle of res-judicata operates after the determination of the case; so in case if judgment is not given by deciding all the issues then problem can erupt in future whether the rule of res-judicata will operate or not for that particular issue.

b) DECREE:

DEFINITION:

Decree is defined u/s 2(2) of Civil Procedure Code, 1908. It means the **formal expression of an adjudication** which **conclusively determines the rights of the parties** with regard to all or any of the matter in controversy in the suit.

ESSENTIALS OF DECREE:

1. There must be adjudication.
2. It must have been done in a suit.
3. It must determine the rights of the parties.
4. The determination must be of conclusive nature.
5. There must be formal expression of such adjudication.

TYPES:

A decree may be either **preliminary** or **final**.

A decree is **preliminary when a further procedure has to be taken before the suit can be completely disposed off. When adjudication completely disposes of the suit such decree is final.**

It may be noted that the term decree doesn't include the following:

- ➔ Any adjudication from which an appeal lies as an appeal from an order or
- ➔ Any order or decision of the dismissal of the suit for default.

"Formal expression" means the recordation of the ruling of the Court on the matter presented before it, so far as the Court expressing it alludes to the fact that the same issue cannot be adjudicated by or before the Court again but only before a higher forum i.e. an appellate forum.

DRAWING OF A DECREE:

A decree must be drawn within 15 days separately after a judgment.

Deemed Decrees: A deemed decree is one which, though not fulfilling the essential features of a decree as required by the Code has been expressly categorized as a decree by the legislature. The rejection of a plaint and the determination of questions of facts are deemed decrees.

CONTENTS OF DECREE:

1. The no. of suit.
2. The names and description of parties and their registered address.
3. The particulars of the claim.
4. The relief granted.
5. The amount of the cost incurred in the suit.
6. The date on which judgment was pronounced.
7. The signature of the judge.
8.

DIFFERENCE BETWEEN JUDGMENT AND DECREE:

Judgment is defined in section 2(9) of the C.P.C. which says judgment is the statement given by the Judge on the grounds of a decree or order. Judgment refers to what the judge writes regarding all the issues in the matter and the decision on each of the issues. Hence every judgment consists of facts, evidence, findings etc. and the conclusion of the court.
The term decree is defined in section 2(2) of the C.P.C. which reads as follows: **decree** means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

a) any adjudication from which an appeal lies as an appeal from an order, or
b) any order of dismissal for default.

Decree is the conclusion reached by the judge after hearing both parties on merits and expressing the same in writing. Basically decree is the subset in the set of judgment.

The decree forms the last part of the judgment and is extracted from the entire judgment by the decree clerk who contains the basic details and the result of the case. The date of the decree is the date of judgment for the purpose of execution though it can be signed anytime later even by a

successor judge though it should be given within 15 days. Even a set-off/ counter claim is in the same decree.

Judgments by way of an amendment in 1976 must contain the exact decree and words like "decree what is prayed for" cannot be used. Thus every judgment contains the decree, amongst other things and the decree is usually the last portion of the judgment and the decree independently is without reasoning.

There is no need of a statement in a decree though it is necessary in a judgment. Likewise, it is not necessary that there should be a formal expression of the order in the judgment, though it is desirable to do so. A judgment is a stage prior to the passing of a decree or an order, and after the pronouncement of the judgment, way for the decree has to be left wide open . Decree has to be in line with the judgment and it should present the correct interpretation of the judgment. But in case, scenario arises where there appears to be a conflict between the judgment and the decree, then the decree must be reasonably construed and if on such construction both of them able to remain together, then adhere to that decree. But if it gets difficult for the decree to stay together with the judgment, then it must be amended under section 151 of the C.P.C. and if there is any clerical mistakes in the decree, then section 152 of the C.P.C. will take out the decree safe from the clutch of being declared nullity.

c) INTEREST

Section 34 of CPC deals with the provisions of Interest. It reads as follows:

(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of the payment or other earlier date, the court shall be deemed to have refused such interest, and a separate suit there for shall not lie.

Scope of Section 34 ;

Section 34 has no application to interest prior to the institution of the suit, which is a matter of substantive law. It is concerned only with interest during the pendency of the suit and after the decree, which is in the discretion of the Court.

The proviso added to section 34 by the Amendment Act, 1976, increases the post-decretal interest in relation to a liability arising out of the commercial transaction. A commercial transaction means a transaction connected with the industry, trade or business of the party incurring the liability.

As regards the interest accrued due prior to the institution of the suit or the principal sum adjudged, which is outside the scope of the present section, the law is that if there is a stipulation for the payment of interest at a fixed rate, the court must allow it up to the date of the suit, unless the rate is penal or excessive on account of the transaction being unfair, when the court may allow reasonable rate of interest.

If there is no express stipulation for payment of interest, the plaintiff is not entitled to it except in the case of (a) mercantile usage, (b) statutory right to interest, as under section 80 of the Negotiable Instruments Act when no rate of interest is specified in a promissory note or bill of exchange, the court shall award interest at 6 per cent per annum from the date of the amount due and (c) implied agreement.

Post suit—Interest:
As regards interest due from the date of the suit to the date of the decree and that due from the date of the decree to the date of payment, that is governed by section 34 mentioned above. The section applies where the decree is for a definite sum of money.

It embraces also a claim to unliquidated damages. In money suits, therefore, the question of interest after the institution of the suit passes from the domain of contract into that of judgment and the court has discretion as to the rate of interest. That discretion, however, is a judicial discretion to be exercised on proper judicial grounds and not arbitrarily.

Interest in the Decree:
The jurisdiction to provide interest in the decree notwithstanding the fact that there is no reference to it in the judgment is one which is peculiar to money decree and the Courts are vested with such jurisdiction under section 34, C.RC.

In the decree in a suit for the payment of money, the Court can, at its discretion, provide for the payment of reasonable interest on the principal amount adjudged : (a) from the date of suit to the date of decree; (b) in addition direct the payment of any interest adjudged on such principal sum

for any period prior to the institution of the suit; and (c) may also direct the payment of further interest at such rate not exceeding 6 per cent as the Court deems reasonable on such principal sum from the date of the decree to the date of payment or such earlier date as the Court thinks fit.

In case of recovery of loan order levying future interest on principal sum adjudged is valid.

Interest pendente lite be awarded at reasonable rate. Interest at the rate of 12% p.a. was claimed by the appellant. It was held that reasonable rate of interest for the pendente lite interest was 12% p.a. Interest rate at 6% p.a. is prescribed for the period after passing decree and is not for period, suit was pending in court.

Arbitrator under Section 13 of Arbitration Act (1940) has power to award preference in interest in references made after coming into force of Interest Act (1978).

There was settlement between parties as regards dues and the court passed consent decree fixing rate of interest at 30% considering the conduct of paying party and facts of the case were not routine. The Supreme Court reduced the rate of interest to 15% considering the prevailing rate of interest on bank loans, etc.

Rate of future interest as awarded on money decree was reduced from 18% to 12%. The reason for this was that the relationship between parties was not only that of lender and borrower but there was agreement similar to cash credit arrangement with bank and Bank rate of interest at relevant time was 12%.

Deposit Court without notice to Decree holder—Interest allowed:
Compensation amount was deposited in court but no information was given to claimants about such deposit either by judgment-debtor or by court. Interest on decretal amount was allowed from date of deposit till decree holder got information of deposit in view of Order XXI, Rule 1, C.P.C. The awardee was deprived of opportunity of gainfully utilising the amount of award in absence of notice about the deposit made by judgment-debtor.

Where deposit of decretal amount is made in court without notice of deposit to decree holder, it cannot be deemed towards the principal.

Interest in mortgage suits:
In a decree passed in a suit for foreclosure, sale or redemption where interest is legally recoverable, the court may order payment of interest to the mortgagee as follows:

(a) Interest up to the date of the payment of the amount found due under the preliminary decree to be made by the mortgagor (i) on the principal amount found or declared due on the mortgage, at the rate payable on the principal or, where no such rate is fixed, at such rate as the court deems

reasonable; and (ii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage security up to the date of the preliminary decree and added to mortgage money, at the rate agreed between the parties, or, failing such rate, at such rate not exceeding six per cent per annum as the court deems reasonable;

(b) Subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the court deems reasonable. (Order XXXIV, Rule 11).

In case of mortgage suits special provisions in Order XXXIV, Rule 11 alone are applicable and section 34 is not applicable.

Grant of interest in suit for recovery of electricity and water consumption:
Where suit for recovery of electricity and water consumption from lessee was made. Held, that liability did not arise out of commercial transaction. Therefore, interest awarded at the rate of 18% was reduced to 6% per annum.

Claim for enhanced rate of interest allowed on suit for recovery of loan by bank:
Where in a suit for recovery of loan by bank enhanced rate of interest was claimed as per agreement between the parties. Observations by Trial Court that there was no record to show that defendants had agreed to pay higher rate of interest was contrary to terms of agreement. Subsequent acknowledgement made by defendants also indicated that they had acknowledged their liability of amount due which was calculated on the basis of enhanced rate of interest.

Held, that there was no question of taking separate consent of defendant as rate was increased as per terms of agreement. There was also no violation of principles of natural justice for want of notice to the defendants. As such, agreement for enhanced rate of interest was allowed.

Charging of additional interest for period of default in terms of contract:
Where for enforcement of contract of guarantee, additional interest was charged for period of default in terms of contract, held that it did not amount to charge of penal interest.

d) COST

Section 35 of CPC deals with the provisions of Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes

aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

Going by the above provision, Cost as per section 35 is a matter of discretion of the Court.

It is manifest that this section confers wide discretion on the Courts in the matter of awarding costs. Such discretion must be a judicial discretion to be exercised on legal principles and not by caprice. It is also well settled that in the exercise of this discretion, the Court is not confined to the consideration of the conduct of the parties in the actual litigation itself, but may also take into consideration matters, which led up to and were the occasion for that litigation. The Courts can award costs even against the persons who are not parties to the suit, it is also established that a Defendant who remains ex parte is as much hound by the decree as the Defendant who contests the suit. The Court has ample discretion to award costs even against the persons who were not parties to the suit if the Court considers that their conduct warrants it. It is also plain that if some of the parties interested in the litigation choose to be impleaded as the Defendants, but set up one having a right similar to theirs' as a Plaintiff in the hope that the litigation proves successful they shall have the benefit of the decree, such a Defendants can also be made liable for costs. The Court, in making an Order as to costs, can consider the conduct of that party both antecedents to the suit as well as in the suit itself.[1]

However, the discretion is to be exercised with special reference to all the circumstances of the case, including the conduct of the parties.[2]

Section 35A on the other hand reads as under:

Section 35A - Compensatory costs in respect of false or vexatious claims or defences

(1) If in any suit or other proceedings, including an execution proceeding but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if, thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court, if it so thinks fit may, after recording its reasons for holding" such claim or defence to be false or vexatious, make an Order for the payment to the objector by the party by whom such claim or defence has been put forward, of cost by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding Rs. 3,000 or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887) or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law, are less than Rs. 250, the High

Court may empower such Court to award as costs under this section any amount not exceeding Rs. 250 and not exceeding those limits by more than Rs. 100.

Provided further, the High Court may limit the amount which any Court or class of the Courts is empowered to award as costs under this section.

(3) No person against whom an Order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation is respect of such claim or defence.

The purpose and objective of the above provisions is that the Trial Court should take a deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. The cost awarded under Section 35A is to discourage false and frivolous claims or pleas being taken. However, the Court before passing any Order must satisfy that the claim sought is false to the knowledge of the Plaintiff, and the opponent party at the earliest opportunity took objection against it.

The present Order speaks about all the relevant and necessary elements pertaining to both the sections. It further goes on to explain that the High Court Legal Services Committee is a statutory authority and not a "State" that spends money on providing judicial infrastructure. The Courts, now, are expected to be and should be clear as to where the costs have to be deposited.

UNIT-II: Execution

a) Courts by which decree may be executed:

Section 37.Definition of Court which passed a decree.

The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

[1][Explanation.-The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

38. Court by which decree may be executed.

A decree may be executed either by the court which passed it, or by the Court to which it is sent for execution.

39. Transfer of decree.

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Transfer of decree to Court in another State.

Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.

41. Result of execution proceedings to be certified.

The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

42. Powers of Court in executing transferred decree.

[1][(1)] The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

[2][(2) Without prejudice to the generality of the provisions of sub-section (1) the powers of the Court under that sub-section shall include the following powers of the Court passed the decree, namely:-

(a) power to send the decree for execution to another Court under section 39;

(b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Courts to which a decree is sent for execution any of the following powers, namely-

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.]

42. Power of Court in executing transferred decree:

(1) The court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the decree shall be punishable by such court in the same manner as if it had passed the decree, and its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers of the court under that sub-section shall include the following powers of the court which passed the decree, namely-

(a) power to send the decree for execution to another court under section 39.

(b) power to execute the decree against the legal representative of the deceased judgment debtor under section 50.

(c) power to order attachment of a decree.

(d) power to decide any question relating to the bar of limitation to the excitability of the decree.

(e) power to record payment or adjustment under Rule 2 of order XXI.

(f) power to order stay of execution under Rule 29 Order XXI,

(g) in the case of a decree passed against a firm power to grant leave to execute such decree against any person other than a person as is referred to in clause (b) or clause (c) of sub-rule (1) of Rule 50 of Order XXI.

(3) A court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the court which passed the decree.

c) APPLICATION FOR EXECUTION

The following persons may file an application for execution:

1. Decree-holder
2. Legal representative of the decree-holder.
3. Representative of or a person claiming under the decree holder.
4. Any person claiming under the decree-holder.
5. Transferee of the decree-holder..

Against whom execution may be taken out:

1. Judgment-debtor.
2. Legal representative of the judgment-debtor
3. Representative of or a person claiming under the judgment-debtor
4. Surety of the judgment-debtor

To whom application can be made:

An application may be filed in the court which passed the decree, or in the court to which the decree has been transferred for execution.

d) MODES OF EXECUTION:

51. Powers of Court to enforce execution.

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison [1][for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];
(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

[2][Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-
(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.]

52. Enforcement of decree against legal representative.

(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. Liability of ancestral property.

For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

54. Partition of estate or separation of share.

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession shares, of such estates.

55. Arrest and detention.

(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise :

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any

dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he[1][may be discharged], if he has not committed any act of bad faith regarding the subject of the application and if he complies with provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court [2][may release] him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realised or commit him to the civil prison in execution of the decree.

56. Prohibition of arrest or detention of women in execution of decree for money.

Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

57. Subsistence allowance.

The State Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

58. Detention and release.

(1) Every person detained in the civil prison in execution of a decree shall be so detained,-

(a) where the decree is for the payment of a sum of money exceeding [12] [five thousand rupees], for a period not exceeding three months, and]

[3][(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks :]

Provided that he shall be released from such detention before the expiration of the [4][said period of detention]-

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

[5][(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed [6][two thousand rupees.]]

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. Release on ground of illness.

(1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom,-

(a) by the State Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

60. Property liable to attachment and sale in execution of decree

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following properties shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artisans, and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government

(h) the wages of labourers and domestic servants, whether payable in money or in kind

(i) salary to the extent of one thousand rupees and two-thirds of the remainderin execution of any decree other than a decree for maintenance
(j) a right to future maintenance;
(k) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree; and
(l) where the judgment-debtor is a person liable for the payment of land-revenue; any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

e) STAY OF EXECUTION:

It is dealt under the provisions of Rule 26 of Order 21 of CPC. This rule lays down that the executing court shall, on sufficient cause being shown and on the judgment-debtor furnishing security or fulfilling such conditions, as may be imposed on him, stay execution of a decree for a reasonable time to enable the judgment-debtor to apply to the court which has passed the decree or to the appellate court for an order to stay execution.

For this rule to apply, there must be **two simultaneous proceedings** in one court:

1. A proceeding in execution of the decree at the instance of the decree holder against the judgment debtor.

2. A suit at the instance of the judgment debtor against the decree-holder.

f) Questions to be determined by the Court executing decree -
(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.
Explanation I. For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.
Explanation II. (a) For the purposes of this section, a purchaser of property at a sale in execution

of a decree shall be deemed to be a party to the suit in which the decree is passed; and (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

The objective of this section is to provide cheap and fast remedy for the resolution of any questions arising at the time of execution. Institution of new suits would only increase the number of suits and would also be a burden on the parties.

The scope of this section is very wide. It confers exclusive jurisdiction to the court executing the decree in all the matters regarding the execution. It does not matter whether the matter has arisen before or after the execution of the decree. Thus, this section should be construed liberally.

Conditions-

1. The question must be one arising between the parties or their representatives to the suit in which the decree is passed.
2. The question must relate to the execution, discharge, or satisfaction of the decree.

What is meant by execution, discharge and satisfaction of a decree -

This expression has not been defined in the code. However, the following questions are held to be relating to the execution, discharge and satisfaction of the decree - whether a decree is executable, whether a property is liable to be sold in execution of a decree, whether the decree is fully satisfied, whether the execution of the decree was postponed.

The following questions have been held as not related - whether the decree is fraudulent or collusive, whether the decree has become in executable because of a compromise between the parties, a question about the territorial or pecuniary jurisdiction of the court passing the decree.

Appeal and Revision

Earlier, determination made under Section 47 was deemed to be a decree under Section 2(2). However, after the amendment in 1976, this is not so. Any determination made under an application under Section 47 is not considered a decree and is therefore not appealable under Section 96 or Section 100. Since it is no more a decree, a revision application under Section 115 is therefore maintainable provided the conditions stipulated in Section 115 are satisfied.

UNIT-III-APPEALS

a) Appeal from original decree.

Section 96 0f CPC deals with the provisions of Appeal from original decree.

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex pane.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[1][(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed [2][ten thousand rupees].]

97. Appeal from final decree where no appeal from preliminary decree.

Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98. Decision where appeal heard by two or more Judges.

(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is [1][composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench] and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any) of the Judges who have heard the appeal including those who first heard it.

[2][(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court.]

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

No decree shall be reversed or "substantially varied, nor shall any case be remanded in appeal on account of any mis joinder [1][or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

b) Appeals from appellate decrees

Section 100 of CPC deals with the provisions ofAppeals from appellate decrees:

100. Second appeal.

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed exparte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

(i) The scope of exercise of the jurisdiction by the High Court in second appeal under section 100 is limited to the substantial question of law. To be a substantial question of law must be

debatable, not previously settled by law of the land or a binding precedent and answer to the same will have a material bearing as to the rights of parties before the Court; Govindaraja v. Mariamman, AIR 2005 SC 1008.

(ii) The High Court was not justified in setting aside the concurrent finding of fact on sub-letting and nuisance without formulating any substantial question of law; Hari Singh v. KanhaiyaLal, AIR 1999 SC 3325.

(iii) The High Court, in second appeal is not justified in setting aside a mixed question of law and fact; Ram Kumar Agarwal v. ThawarDass (dead) by LR, AIR 1999 SC 3248.

(iv) The High Court, should not interfere with the concurrent finding of fact in a routine and casual manner by substituting its subjective satisfaction in place of lower courts; Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-un-Niswan, AIR 1999 SC 3067.

(v) Where the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in second appeal, treating as substantial question of law; KondibaDagaduKadam v. SavitribaiSopanGujar, AIR 1999 SC 2213.

(vi) The findings of fact arrived by the courts below are binding in second appeal; Smt. Bismillah Begum (dead) by LRs v. Rahmatullah Khan (dead) by LRs, AIR 1998 SC 970.

(vii) Conclusion about limitation is a finding of fact and is not open for interference in the second appeal; Smt. Saraswatidevi v. KrishnaramBaldeo Bank Limited, AIR 1998 MP 73.

(viii) Once the evidence on which the courts of fact have acted was admissible and relevant, party cannot be allowed to raise that said evidence is insufficient to justify the finding of facts in second appeal; Ramanuja Naidu v. Kanniah Naidu, JT 1996(3) SC 164.

(ix) Second Appeal—Interference with the factual finding is permissible only if the said finding is unreasonable; Sadhu Mehar v. Rajkumar Patel, AIR 1994 Ori 26.

(x) Second Appeal—Interference with factual findings recorded by the court below is permissible in cases of non-consideration of relevant evidence; Nalini v. Padmanabhan Krishnan, AIR 1994 Ker 14.

(xi) Question of fact can not be allowed to be raised in second appeal; PrabhuDayal v. SuwaLal, AIR 1994 Raj 149.

(xii) Interference with finding of fact is permissible if the court below ignored weight of evidence on record altogether; Ajab Singh v. ShitalPuri, AIR 1993 All 138: 1993 All LJ 548.

(xiii) Erroneous application of law—Second appeal is maintainable If it raises a substantial question; RatanlalBansilal v. KishorilalGoenka, AIR 1993 Cal 144: 1993(1) Cal HN 307: 1993 (1) Cal LJ 193.

(xiv) Interpretation of the contract involves a substantial question of law. It can be examined in second appeal; Smt. VidyaWati through her LRs. v. Hans Raj through his L.Rs., AIR 1993 Del 187: 1993 Rajdhani LR 274.

(xv) Perverse finding recorded by the court below—Second appeal is maintainable; RatanlalBansilal v. KishorilalGoenka, AIR 1993 Cal 144: 1993 (1) Cal HN 307: 1993 (1) Cal LJ 193.

(xvi) Factual finding based on no evidence—Second appeal is maintainable; RatanlalBansilal v. KishorilalGoenka, AIR 1993 Cal 144: 1993 (1) Cal HN 307: 1993(1) Cal LJ 193.

(xvii) Finding of fact recorded by the first appellate court cannot be interfered with in second appeal unless perverse; Padmashree S.N. Swamy v. Smt. Gowramma, AIR 1993 Kant 208: 1992 (3) Kant LJ 244: 1993 (2) APLJ 18.

100A. No further appeal in certain cases.

Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment and decree of such single Judge.]

101. Second appeal on no other grounds.

No second appeal shall lie except on the ground mentioned in section 100.

102. No second appeal in certain cases.

[1][102. No second appeal in certain cases.

No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees".

c) General provisions of appeal:

103. Power of High Court to determine issues of fact.

In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts reason of a decision on such question of law as is referred to in section 100.]

104. Orders from which appeal lies.

(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:-

a) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;
b)an order under section 95;

c)an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

d)any order made under rules from which an appeal is expressly allowed by rules;

(2) No appeal shall lie from any order passed in appeal under this section.

105. Other orders.

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but. where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. What Courts to hear appeals.

Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

107. Powers of Appellate Court.

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from appellate decrees and orders.

The provisions of this Part relating to appeals from original decree shall, so far as may be, apply to appeals-

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

d) Appeals to the Supreme Court

109. When appeals lie to the Supreme Court.

[1][109.When appeals lie to the Supreme Court.

Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies-

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

e) Appeal by an indigent person:

A person is an indigent person: (1) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject of the suit) to enable him to pay the fee prescribed by law for the plaint in the suit proposed to be instituted by him, or (2) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit. (Order XXXIII, Rule 1, Expln. I).

Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person. (Order XXXIII, Rule 1, Expln. II).

Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity. (Order XXXIII, Rule 1, Expln. III).

The benefit of Order XXXIII, C.RC.is conferred on persons without ‘sufficient means’ and not without any means at all. Pauperism is not a pre-requisite for the leave. What is contemplated is not possession of property but sufficient means. Capacity to raise money and not actual possession of property alone is what the court has to look into.

Possession of sufficient means refers to possession of sufficient realisable property which will enable the plaintiff to pay the court-fee. Possession of hard cash sufficient enough to pay the court-fee is not a pre-requisite to make one a person of sufficient means within the meaning of the rule. A person entitled to sufficient property may nevertheless be not possessed of sufficient means to pay court-fee.

Even one who is entitled to or possessed of property cannot be for that reason alone held to be having sufficient means. What is intended and provided is that justice shall not be denied to a person for the reason that he is not having sufficient means to pay court-fee.

What is intended is not capacity to raise funds by means whatsoever by begging, borrowing or stealing or by any other hook or crook, but by normal, and available lawful means. It is not an essentiality that one should deprive himself of the sole means of livelihood or alienate all his

assets and seek justice in penury. This itself is the object of exclusion of property exempt from attachment in execution of a decree and the subject-matter of the suit from "sufficient means".

Assessment or "sufficient means" should not be at the expense of right to live with dignity guaranteed under the Constitution. Capacity to raise funds could only cover all forms of realisable assets which a person could in the normal circumstances convert into cash and utilise for the litigation without detriment to his normal existence.

A debt that has yet to be realised or an asset which is not within the immediate reach of the plaintiff to be converted into cash for payment of court-fee cannot be taken into account in calculating sufficient means. The approach must be practical and in a way to promote the cause of justice and at the same time cautious enough to plug mala fide avoidance of immediate payment of court fee. The words used are 'possessed of sufficient means' which mean that what was not possessed at the time of suit cannot be taken into account.

Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the court unless the court otherwise directs, and the court may adopt the report of such officer as its own finding or may itself make an inquiry into the question. (Order XXXIII, Rule 1A).

The word 'means' certainly covers all realisable assets within a person's reach, but it is doubtful whether a right to enjoy a particular property for life, by which the person entitled to enjoy the same has to take out his livelihood from the income of such property can be considered means even if an offer is made to advance funds on such right.

It cannot be equated with the equity of redemption available to a mortgagor which certainly is an asset. The right to enjoy the property is not normally a saleable or encumberable interest though persons interested might offer to purchase or take a mortgage, not necessarily to help the vendor or mortgagor, but to place the allottee in embarrassing circumstances.

A person to be entitled to sue as an indigent person has to obtain permission to sue as such by the court. The application for permission must contain the particulars required in regard to plaints and a schedule of the property, movable and immovable, belonging to the applicant, with the estimated value thereof, and it should be signed and verified as if it were a plaint.

The application should be presented to the court by the applicant in person, unless he is exempted from appearing in court in which case the application may be presented by an authorised agent, who can answer all material questions relating to the application: provided that where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs. The applicant or his agent may then be examined by the court regarding the merits of the claim and the property of the applicant. (Order XXXIII, Rules 2-4).

Possession of a house, possession of some land and possibility of getting compensation do present a rosy picture. However, they become illusory when the compensation is yet to be received, when the petitioner has no other shelter to house his family, when the petitioner has five members to support including himself with wages of Rs. 410/- per month as an employee in a petrol pump.

The above considerations persuaded the court to reject the findings of the trial court and to permit the petitioner to sue as an indigent person. In the event of the petitioner receiving the compensation due to him in respect of one-third area of 4 acres 12 guntas of land acquired by the Government, there is always a residual liability to pay the court fee and the right to recover as far as the State is concerned. The petitioner was permitted to sue as an indigent person.

Possession of 'sufficient means' as indicated in cl. (a) of Explanation I of Rule 1 is not possession of property but of sufficient means and the court has to enquire into the capacity to raise money and not actual possession. The possession of 'sufficient means' refers to the possession of sufficient realisable property which will enable the plaintiff to pay the court-fee on the plaint.

The expression 'possession of sufficient means' refers to capacity to raise money and not the actual possession of property. Where the property of the party is hypothecated to a bank to secure principal and interest, and the party is not in a position to convert the property into cash, he cannot be held to be a person possessing sufficient means to pay the court-fee.

The word 'means' is intended to cover and include all forms of realisable assets which can be converted into cash, and as such can be used for financing the litigation. A debt which is due from a third person cannot be said to be 'means' of which the applicant is possessed, and the words 'is not possessed of' must mean that the applicant has no actual control over it.

'Possessed of sufficient means' mean actual control over a thing and capacity to reduce it into his possession without having recourse to law. Where the petitioner is possessed of some property which is not cash, the test to decide whether he is a pauper is not whether in the abstract he has the power of raising money, but whether in the concrete circumstances of the case he can succeed in raising anything substantial by exercising that power.

The application to sue as indigent person should not be rejected summarily merely on the ground that it has not been signed and verified by the applicant. Even if there is an omission in the application, the application may be returned for rectification. The rule is not to be meticulously interpreted against the applicant.

A substantial compliance with the rule is sufficient. Where the applicant does not verify the contents of the petition at the foot of the petition but does so by a separate affidavit in which the

statements contained in the several paragraphs in the application were said to be true, the affidavit could be treated as a part of the application.

Rejection of application:
The court shall reject an application for permission to sue as an indigent person—

(a) Where it is not properly framed and presented in the manner prescribed by Rules 2 and 3, i.e., full particulars as detailed above are not given or where the application is not presented by the proper person; or

(b) Where the applicant is not an indigent person; or

(c) Where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person, provided that such an application shall not be rejected if after taking into account the value of the property disposed of by the applicant, the applicant would be entitled to sue as an indigent person; or

(d) Where his allegations do not show a cause of action; or

(e) Where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter; or

(f) Where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force; or

(g) Where any other person has entered into an agreement with him to finance the litigation. (Order XXXIII, Rule 5).

This rule is intended to be exhaustive.

An application to sue as an indigent person is a composite document consisting of an unstamped plaint and an application for permission to sue in forma pauperis. If the application for permission to sue in forma pauperis is rejected, the plaint still remains and the court may, in its discretion, allow the petitioner to pay the court fee and in such a case the suit shall be deemed to have been instituted on the date of presentation of the application. After rejection of the leave, the court should consider whether the petitioner plaintiff should be given time for payment of court fee and pass appropriate orders.

Procedure:

When the court sees no reason to reject the application on any of the grounds stated above, it shall fix a day after notice to the opposite party and the Government pleader for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

The court examines the witnesses produced by either party and the applicant or his agent makes a full record of their evidence and hears arguments and after such hearing may allow or refuse to allow the applicant to sue as an indigent person. Where the application is granted it is numbered and registered and deemed the plaint in the suit. The suit then proceeds in the ordinary manner except that the plaintiff is not liable to pay any court-fee, other than fee payable for service of process. (Order XXXIII, Rules 6-8).

The High Court was labouring under a mistake when it said that the enquiry into the question whether the respondent was an indigent person was exclusively a matter between him and the State Government and that the appellant was not interested in establishing that the respondent was not an indigent person.

Order XXXIII, Rule 6 provides that if the court does not reject the application under Rule 5, the court shall fix a day of which at least 10 days' notice shall be given to the opposite party and the Government pleader for receiving such evidence as the applicant may adduce in proof of pauperism and for hearing any evidence in disproof thereof.

Under Order XXXIII, Rule 9, it is open to the court on the application of the defendant to dispauper the plaintiff on the grounds specified therein, one of them being that his means are such that he ought not to continue to sue as an indigent person.

Immunity from litigation unless the requisite court fee is paid by the plaintiff is a valuable right for the defendant. And does it not follow as a corollary that the proceedings to establish that the applicant-plaintiff is an indigent person, which will take away that immunity, is a proceeding in which the defendant is vitally interested?

To what purpose does Order XXXIII, Rule 6, confer the right on the opposite party to participate in the enquiry into the pauperism and adduce evidence to establish that the applicant is an indigent person unless the opposite party is interested in the question and entitled to avail himself of all the normal procedure to establish it.

Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the court may, if the circumstances of the case so require, assign a pleader to him. (Order XXXIII, Rule 9A).

Where the plaintiff succeeds in the suit, the court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same and shall be a first charge on the subject-matter of the suit. (Ord XXXIII, Rule 10).

A suit by an indigent person or a person claiming to be an indigent person must be regarded as instituted on the date of the presentation of application for permission to sue in forma pauperis as required by Rules 2 and 3 of Order XXXIII, C.P.C. When permission to sue as an indigent person is granted by the court under Order XXXIII, Rule 7, the petition or application must be regarded as a plaint filed on the day when the application was presented to the court.

Vijay Pratap Singh v. Dukh Haran Nath Singh:
An application to sue in forma pauperis is but a method prescribed by the Code for institution of a suit by an indigent person without payment of fee prescribed by the Court Fees Act. If the claim made by the applicant that he is an indigent person is not established the application may fail. But there is nothing personal in such application. The suit commences from the moment an application for permission to sue in forma pauperis as required by Order XXXIII of the Code of Civil Procedure is presented, and Order I, Rule 10 of the Code of Civil Procedure would be as much applicable in such a suit as in a suit in which court-fee had been duly paid.

There is nothing in Order XXXIII, C.P.C. which prevents an applicant from telling the court that although he had prayed for permission to sue in forma pauperis, he is now in possession of funds and would like to pay the court fee on the application treating it as a plaint.

Thereby, in effect, the applicant withdraws his prayer for permission to sue as an indigent person and requests the court not to apply the provisions of Order XXXIII to him If the court agrees, and, generally in practice the court does agree, to treat the application as a plaint, in view of the fact that it contains all the necessary particulars required in a plaint, there would be no objection to the suit being treated as one instituted by the presentation of a plaint.

By acceptance of the court-fee by the court, the document, namely, the plain would, by virtue of S. 149, C.P.C. have the same force and effect as if sue fee had been paid in the first instance, viz., on the date it was presented the Court.

Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed for default on failure of the plaintiff to pay f postal charges chargeable for the service of the defendant, the court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pa the court-fees which could have been paid by the plaintiff if he had been permitted to sue as an indigent person. (Order XXXIII, Rule 11).

By refusing the application for forma pauperis, the proceedings are no terminated by the trial court. If the plaintiff fails to pay the court fees within the time fixed, the trial court has to make an order for rejection the plaint. The trial court cannot also pass an order for rejection of the plaint if an appeal against the order of the trial court refusing the application for forma pauperis is pending in the High Court.

It w accordingly directed by Hon. M.L. Bhat, J. of the Allahabad High Court that proceedings in the trial court shall continue until the decision of the appeal in the High Court regarding pauperism. The trial of the suit in the trial court shall be subject to any order which may be passed in the appeal by the High Court. The disposal of the suit shall, however, depend on the decision of the appeal.

Remedies in case of refusal of leave to file suit in forma pauperis:

When in an application made to file a suit in forma pauperis leave is refused to allow the suit to be filed in forma pauperis and when subsequently the court-fee is not paid within the time given for payment and the application made to file the suit in forma pauperis is finally rejected or dismissed, the final orders passed would amount to rejection of the plaint and the remedy of the applicant against such an order is not by way of revision but by way of appeal, such an order being a 'decree' within the meaning of S. 2 (2) of the Code of Civil Procedure.

The earlier order passed refusing permission to sue in forma pauperis merges in such a decree and after passing of the final order rejecting or dismissing an indigent person's application for pauperism the remedy for questioning the correctness of the order of the court refusing permission to file the suit in forma pauperis is only to prefer an appeal against the final order passed rejecting or dismissing the application and not to file a revision against the earlier order passed refusing permission to file the suit in forma pauperis, though such a revision lies before the application is finally rejected or dismissed.

Suit by indigent person:
A Public Limited Company, which is entitled to maintain a suit as a legal person, can maintain an application under Order XXXIII, Rule 1 of the Code.

Dispaupering:
The court may, on the application of the defendant or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered

(1) If he is guilty of vexatious or improper conduct in the course of the suit;

(2) If it appears that his means are such that he ought not to continue to sue as an indigent person; or

(3) If he has entered into any agreement, with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter. (Order XXXIII, Rule 9).

Its effect:
Such an order shall bar a fresh application of a like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays costs (if any) incurred by the State Government and by the opposite party in opposing the application for leave to sue as an indigent person.

Abatement:
The right to sue in forma pauperis being a personal one the application to sue as an indigent person abates on the death of the applicant and his legal representatives cannot be brought on the record and the application continued.

On such abatement the court shall order the amount of court fees which would have been paid by the plaintiff, if he had not been permitted to sue as an indigent person to be recoverable by the State Government from the estate of the deceased plaintiff. The remedy of the legal representative, therefore, is to file a fresh application to sue in forma pauperis, or to institute a suit on paying court-fees.

The privileges of maintaining a suit in forma pauperis is a person' privilege granted to a plaintiff who has no means of carrying on or continuing the litigation. If the plaintiff who is an indigent person dies pending the suit, his legal representative is not entitled to continue the suit in forma pauperis unless he himself is an indigent person and has obtained leave to continue in that capacity.

The right to sue in forma pauperis is a personal right and on the death of the original plaintiff his legal representative cannot prosecute the suit unless he either pays the court fee or proves that he himself is a pauper. An application for leave to sue in forma pauperis is a composite document consisting of an unstamped plaint and an application for permission to sue as an indigent person.

If the application is rejected, the plaint still remains and the court may, in its discretion, while rejecting the application, allow the applicant to pay the requisite court-fee on the plain and in that case the plaint shall be deemed to have been instituted on the date of presentation of the original application.

Rejection of application:
As provided under Order XXXIII, Rule 15 an order refusing to allow an application to sue as an indigent person could be a bar only to any subsequent application of the like nature by him in respect of the same right to sue, but the applicant would be at liberty to institute a suit in the ordinary manner in respect of such right, provided that the plaint shall be rejected if he does not

pay, either at the time: institution of the suit or within such time thereafter as the court may allow the costs, if any incurred by the State Government and by the opposite pa [1] in opposing his application for leave to sue as an indigent person.
Therefore the idea is that even if the applicant fails ultimately in his application filed to sue as an indigent person by the dismissal of the application, he is not prevented from instituting a suit in the ordinary manner in respect of the same right. This he cannot if the dismissal of his application to sue as an indigent person finally does not amount merely to rejection of the plaint but amounts to only dismissal of the suit for default because there is an essential distinction between rejection of a plaint and dismissal of a suit.

The rejection of a plaint takes away the basis of the suit. It amounts to that no suit was filed. But in the case of a dismissal even for default the existence of the suit is recognised and its termination is indicated, in which case the applicant is no longer within his right to institute a suit even in the ordinary manner in respect of the same right.

Therefore, when any application for pauperism is finally disposed of after refusing leave to t applicant to sue in forma pauperis, it amounts to rejection of the plaint and not dismissal of the suit for default.

Grant of time for payment of court-fee:

Nothing contained in Rule 5, Rule 7 or Rule 15 shall prevent a court, while rejecting an application under Rule 5 or refusing an application under Rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the court or extended by it from time to time; and upon such payment and on payment of the costs referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented. (Order XXXIII, Rule 15A).

The costs of an application for permission to sue as an indigent person and of an inquiry into pauperism shall be costs in the suit. (Order XXXIII, Rule 16).

Any defendant, who desires to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person and the rules contained in Order XXXIII shall, so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint. (Order XXXIII, Rule 17).

UNIT-IV

a) REFERENCE TO HIGH COURT

Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same for the opinion of the High Court and the High Court may make such order thereon as it thinks fit:

Provided that where the court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons there for, and refer the same for the opinion of the High Court.

Explanation:
In this section "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

Order XLVI, Rule 1, C.P.C., prescribes the conditions to be satisfied to enable a subordinate court to make a reference, either of its own motion or on the application of any of the parties. It reads:

It is serious error on record to grant relief to the plaintiff in suit for ejectment based on disputed title and possession merely on the basis of entries in revenue records without making inquiry or investigation of title to suit land and rewarding finding in that regard.

Validity of interlocutory order can be challenged in an appeal against final decree unless such on order was appealable. The illegality of interlocutory order vitiating the disposal of suit cannot be ignored on the ground of non-filing of revision against it.

Reference of question to High Court:
Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

The conditions which permit a reference are:

(1) There arises a question of law in any suit, appeal or execution from which no appeal lies;

(2) There is reasonable doubt on such question;

(3) The court draws up a statement of the facts of the case and the point on which doubt is entertained; and

(4) The court expresses its own opinion on the point.

A reference can be made to the High Court under this rule only in suit or appeal arising out of a suit or in the execution of any such decree, and not in every matter before the court in which a point arises on which the court entertains a reasonable doubt.

The object of S. 113 is to enable the subordinate court to obtain, in non-appealable cases, the opinion of the High Court in advance on a question of law and thereby avoid the commission of an error which could not be remedied later on.

The court making a reference may either stay the proceedings or pass a decree contingent upon the decision of the High Court on the point referred, such decree or order not being executable until the receipt of a copy of the judgment of the High Court upon the reference. (Order XLVI, Rule 2).

The High Court after hearing the parties, if they desire to be heard, shall decide the points and transmit a copy of its judgment to the court which made the reference. Such court shall then dispose of the case in conformity with the decision of the High Court. The costs consequent on a reference for the decision of the High Court shall be costs in the case. (Order XLVI, Rules 3 and 4).

Reference to High Court was for decision of the vires of the provisions of Bombay Provincial Municipal Corporation Act for not providing hearing to tenant/occupant of premises likely to be demolished/acquired. High Court rejected the reference but suggested that notice may be fixed by Municipality on some conspicuous part of premises.

Reference must be decided within four corners of S. 113 and Order XLVI, Rule 3 and once reference was rejected there nothing survived for the High Court to decide and observations were unnecessary for decision of reference.

Power of the High Court:
The High Court may on reference return the case for amendment, or alter, cancel or set aside any decree or order which the court making the reference has passed or made, and make such order as it thinks fit (Order XLVI, Rule 5).

The above provision shows that when the High Court hears a reference it acts like a court of appeal.

Power to refer to High Court questions as to jurisdiction in small causes:
At any time before judgment a court in which a suit has been instituted may refer to the High Court questions as to jurisdiction in small causes where it entertains doubts whether the suit is cognizable by a court of small causes or not. (Order XLVI, Rule 6).

Reference to High Court regarding validity of Act:
Where conviction suit was filed under the Maharashtra Rent Control Act against nationalised Bank. Validity of Section 3 of Maharashtra Act was already upheld by High Court. Held, that in such a situation Small Causes Court or Appellate Court could not have referred question regarding validity of Section 3 of Mah. Act to High Court under Section 113, C.P.C.

b) REVIEW

Subject as aforesaid, any person considering himself aggrieved

(a) By a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) By a decree or order from which no appeal is allowed by, this Code, or

(c) By a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

All decrees or orders cannot be reviewed. The right of review has been conferred by S. 114 and Order XLVII, Rule 1 of the Code. Section 114 provides that any person considering himself aggrieved: (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed by this Code, or (c) by a decision on a reference from a court of small causes, may apply for a review of the judgment to the court which passed the decree or made the order on any of the following grounds mentioned in Order XLVII, Rule 1, viz.

(1) Discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or made, or

(2) On account of some mistake or error apparent, on the face of the record, or

(3) For any other sufficient reason, and the court may make such order thereon as it thinks fit.

Explanation:
The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

The powers of review are intended for correction of mistakes or errors apparent on the face of the record. Under Orissa Board of Revenue Act, 1951, Section 7 confers no wider powers of review on Board or its delegate the commissioner them the powers of review under Order XLVII, Rule 1, C.P.C.

The persons who were not party to the main petition before the Administrative Tribunal filed review petition and also on independent application challanging the earlier decision of the Tribunal. The Tribunal dismissed the independent application as not maintainable but reviewed its earlier decision.

The Supreme Court in special leave petition against the reviewed order held that no question arises as to the maintainability of the review petition before the Tribunal after going through the entire dispute. The SLP was dismissed.

The judgment of Tribunal becomes final and binding as between parties. It cannot be challenged by a person who is not a party to main petition by filing review petition and by special leave petition to Supreme Court.

Condition precedent:
The expression “from which an appeal is allowed” appearing in clause (a) of Order XLVII, Rule 1 should be construed liberally keeping in mind the underlying principle involved in Order XLVII Rule 1 (cc) that before making review applications no superior court has been moved for getting the self same relief, so that for the self same relief two parallel proceedings before two forums are not taken.

1. Discovery of new and important matter or evidence:
The party seeking review must show that he exercised greatest care in adducing all possible evidence and that the new evidence is such as is relevant and that if it had been given in the suit it might possibly have altered the judgment. It is not the discovery of new and important evidence alone which entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.

The case cannot be reopened because the law has been modified by subsequent legislation. The ground for review, viz., new matter or evidence must be something which existed at the date of the decree; the decree cannot be reviewed on the ground of the happening of some subsequent event.

Accordingly, subsequent reversals of a judgment on which the decision was based, a subsequent decision in another case between the parties or a different view of the law taken by the court in a subsequent case are not grounds for review.

An application for review on the ground of discovery of new evidence should show that: (i) such evidence was available and of undoubted character; (ii) that the evidence was so material that its absence might cause a miscarriage of justice; and (iii) that it could not with reasonable care and diligence have been brought forward at the time of the decree. [1939 Cal. 42]. The applicant has, however, to satisfy that there was no remissness on his part.

After dismissal of eviction suit by landlord on grounds of bona fide need of landlord's son for opening of a shop on assumption that available accommodation was shop in review petition it was brought to the notice of Supreme Court that alleged 'shop' was only 'godown' and room cannot be used as 'shop'. The assumption by court that available accommodation was shop was erroreous and no review was allowed.

2. Mistake or error apparent on the face of the record:

It is not limited to a mistake of fact. It may be of law. Failure to consider a ruling is not such an error. It should be an error which can be seen by a mere perusal of the record without reference to any other extraneous matter.

Where, therefore, the legal position is clearly established by a well-known authority, but the Judge has by some oversight failed to notice the same and thus gone wrong, it will be a case coming within the category of an error apparent on the face of the record. The error has to be patent, and an ordinary error of law or a mere failure to interpret a complicated point of law correctly is not an error of law apparent on the face of the record.

An error of law will justify a review because an error apparent on the face of the record will also include an error of law. In a review petition the Court may correct an error apparent on the face of the record but cannot pass a fresh decree for the first time. In returning the plaint the Court directed that costs incurred should abide the result of the suit. But in review application the Court directed the plaintiff to pay the costs of the defendants. The Court is not justified in doing so.

In absence of error apparent on face of record successive review petition against one order is not permissible. Similar unexplained inordinate delayed second review petition in absence of error apparent on the face of record is not maintainable.

Review petition is not maintainable against the orders against which the special leave petition has already been dismissed by the Supreme Court. Review in such circumstances is subversive of judicial discipline.

The administrative tribunal interpreting service rules directs that the main applicants in main petition be considered for promotion to police service between a particular period and not thereafter.

The applicants to review petition were not within the zone of eligibility for consideration to promotion and they were chance of future promotion. Such applicants are not 'aggrieved persons' and are not directly affected by the impugned order of the Tribunal. Review petition by them cannot be maintained.

The order of dismissal was confirmed by the Administrative Tribunal and Supreme Court refused the grant of special leave petition against it. Thereafter the Tribunal reviewed its order and set aside the order of dismissal of employee. Such exercise of review power is deleterious to the judicial discipline.

Once the Supreme Court has confirmed the order passed by the Tribunal that becomes final. The Tribunal cannot have any power to review the previous order which stood merged with the order of the Supreme Court.

If the Tribunal had no knowledge of dismissal of the SLP it might, in certain circumstances, review its earlier order, e.g., if it was found that the order was vitiated by any manifest error of law apparent on the face of record. After receiving the order of Supreme Court, the Tribunal's exercise of power is are audacious and without any judicial discipline.

When the decree allowed to become final, the executing court or reference court cannot amend the decree by exercising powers under Order XLVII, Rule 1 and section 151. Omission to award additional amounts, enhanced interest and solatium and Land Acquisition Act are not clerical or mathematical errors but that amounts to non-award in that regard.

The objection about tenancy was rejected on the ground that there was no material in support of the plea. The High Court in revision, in these circumstances ought not to have interfered in the absence of any factual basis in support of the plea of tenancy raised.

Ambit of review:
Where plea was taken that Court had delivered judgment without waiting for written notes to be submitted by the party. But there was nothing in order sheet to show that Court would be waiting to deliver judgment after having reserved the same till submission of written notes. Held, that unless it was borne out of record, Court was helpless in review proceedings and it was not supposed to take such evidence to establish something not on record in the review proceedings.

No scope of review:
Where plea was taken that decision was rendered in ignorance of settled principle of law. But it was found by the High Court that decision was not erroneous and there was not error in fact or law on the face of record, as earlier decision had conclusively determined issue between parties and it would operate as res judicata. As such, no ground for review could be made out.

Review of order passed by Writ Court not subject to Sections 154, 254 of Income-tax Act, 1961:
The question of review under Section 154 or 254 of the Income-tax Act may have different implication. A review of an order passed by this Court in writ jurisdiction is not subject to Section 154 or 254 of the Income-tax Act.

At the same time, Section 141 of the Code of Civil Procedure (C.P.C.) excludes its application to writ proceedings. Whereas the Appellate Side Rules (A.S. Rules) for Article 226 of the Constitution in Rule 53

provides that save and except as provided in the A.S. Rules and subject thereto the procedure provided in C.P.C. in regard to suits shall be followed, as far as it can be made applicable, in all proceedings for issue of a writ.

The A.S. Rules does not provide for any procedure for review. Therefore as far as it can be made applicable, the provisions of C.P.C. would apply in principle to a proceeding for review in connection with writ proceedings.

3. Any other sufficient reason:

These words have been interpreted by their Lordships of the Judicial Committee in Chajju Ram v. Neki, to mean a reason sufficient on grounds at least analogous to those specified in (1) and (2).

Their Lordships observed in Chajju Ram's case that the Code contemplates procedure by way of review by the court which has already given judgment as being different from that by way of appeal to a court of appeal. The three cases in which alone mere review is permitted are those of a new material overlooked by excusable misfortune, mistake or error apparent on the face of the record, or any other sufficient reason.

The phrase "any other sufficient reason" means a reason at least analogous to those specified in the rule immediately previously, namely, excusable failure to bring to the notice of the court new and important matter or evidence or mistake or error apparent on the face of the record.

The rule set out above is definitive of the grounds on which a review is permissible, but apart from it the court has an inherent power under S. 151 to review its wrong orders or decisions passed previously. But recourse to the inherent powers of the court is not permissible to justify a court in granting a review which is specifically provided for in Order XLVII, Rule 1.

In view of the Explanation added by the amendment of 1976, a subsequent decision of the Supreme Court or a larger Bench of the same court taking a contrary view on the point covered by the judgment does not amount to a mistake or error apparent on the face of the record.

Failure of the court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgment would amount to a mistake or error apparent on the face of the record. But a failure to take into consideration a decision of the High Court would not amount to any mistake or error apparent on the face of the record.

It is true that the Supreme Court has held that the dismissal of SLP without speaking order does not constitute res judicata. The principle of res judicata is founded on public policy that the parties cannot be permitted to have the controversy directly or substantially in issue between the same parties or those claiming under the parties in the subsequent suit in the same proceedings in

the subsequent stages cannot be raised once over. It is a sound principle of public policy to prevent vexation.

But in the present case when the self-same main order was confirmed by the Supreme Court, the exercise of the review power under Order XLVII, Rule 1, and C.P.C. is deleterious to the judicial discipline. Once the Supreme Court has confirmed the order passed by the Tribunal that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by the Supreme Court.

G.S. Gupta v. Basheer Ahmed:
The High Court is a court of plenary jurisdiction and therefore is in a position always to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The principles set down in Order XLVII, Rule 1, C.RC. may be employed by way of analogy, and a case of review directly covered under that provision would nevertheless be considered a case of plenary jurisdiction for correction of grave and palpable error committed by the court.

With that point of view, the court has to refer to the provisions contained in Order XLVII, Rule 1. If the court decides a legal question incorrectly, that cannot be a ground for review. It is for the higher court to set right that finding.

Substantially allowing a petition for review of its judgment in a case relating to the partitioning of the assets of the former Cochin royal family, the Supreme Court comprising Justice V.R Krishna Iyer, Justice D.A. Desai and Justice and A.D. Koshal, observed on March 27, 1980, that once an error in their judgment was revealed, no sense of shame or infallibility complex – obsessed them or dissuaded the court from the anxiety to be ultimately right, not consistently wrong. The Court said that it was amending its judgment of July 30, 1979, having found “an error” therein.

Section 114 of the Code of Civil Procedure has to be read with Order XLVII, Rule 1. Rule 1 of Order XLVII prescribes the ground upon which an application for review can be granted. Under the rule, a person aggrieved by a decree or order may apply for review of the decree or order on discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

In the case in hand, however, it is not the case of the first respondent that the judgment was required to be reviewed because of the discovery of new and important matter or evidence. His case is that there was a bona fide mistake and error in the judgment apparent on the face of record and, therefore, it was necessary to review the judgment.

Whether there is a mistake or error apparent on the face of record in a case depends on individual facts. However, it must be borne in mind, that in order to come to the conclusion that there is a mistake or error apparent on the face of record, it must be one which must be manifest on the face of record.

The error or mistake be so manifest, so clear, that no court would permit such an error or mistake to remain on the record. In coming to the finding that a mistake or error is apparent on the face of record, the court is not required to look into other evidence. Such mistake or error should appear in the order itself or from any other document, which it referred in the said order. If such error occurs then the court is definitely bound to review such judgment.

On directions of High Court, contrary to the scheme of Bank for employment of temporary employees, are liable to be set aside.

Contempt jurisdiction is of original nature and it is not a review jurisdiction.

The High Court recalled its earlier order reinstating a teacher's services in another proceeding where he was not a party and no notice had been given to him in this regard. Such order of recall was set aside.

Where therefore the court affirmed the judgment of the appellate court in declaratory and injunction suit under an apparent wrong impression that the suit land was physically possessed by the plaintiff, the review of earlier judgment was proper.

Writ petition was dismissed in terms of 'minutes of order' tendered by counsel of parties. It is not a consent order but an order in invitum. It is reviewable and also appealable.

Division Bench of High Court dismissed the suit for specific performance of contract and ordered for refund of amount deposited with court receiver. It is not proper for single Judge to review and hold that direction for refund of money was bad as deposit related to another suit. The proper remedy to avail the appeal against Division Bench judgment.

Appeal and Review:

Where an appeal has been preferred a review application does not lie. But an appeal may be filed after an application for review. In such event the hearing of the appeal will have to be stayed. If the review succeeds the appeal becomes infructuous for the decree appealed from is superseded by a new decree. No court can, however, review its order after it has been confirmed on appeal.

In case of allotment of houses in self financing scheme question with regard concession of profit and overhead charges was concluded in writ petition of allot-tees and Supreme Court dismissed special leave petition against it. Still the High Court re-opened the issue and granted the

concession. Supreme Court set aside the review order of the High Court on ground of its being without jurisdiction.

A party who is not appearing from a decree or order may, however, apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

The proceedings for review and appeal differ in many particulars. First the primary intention of a review is the reconsideration of the object of the suit by the same Judge under certain conditions, while an appeal is a re-hearing by another court or tribunal.

Secondly, a point which may be a good ground for an appeal may not be a good ground for an application for review, e.g., an erroneous view of evidence or of law is no ground for a review though it may be a good ground for an appeal.

A review does not of necessity re-open questions already decided between the parties. The matter in issue is reopened when the application for review is allowed, while in the case of an appeal, the matter is re-opened as soon as the appeal is admitted.

Order XLVII, C.P.C. contemplates three stages in a review petition. It is open to the court to reject the review application if it finds that on ground for review has been made out.

It may issue notice to the other side before passing a final order on the review application and then, after hearing the parties, dismiss or allow the review application. If the application for review is dismissed, the matter ends there. If the application is allowed, then the order sought to be reviewed may either be modified or set aside.

The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C. The review petition has to be entertained only on the ground of error apparent on the face of the record and not on any other ground.

An error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order XLVII, Rule 1, C.P.C. is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226.

As observed in SatyanarayanLaxminarayanHegde v. MallikarjunBhavanappaTirumale, “Where an alleged error is far from self-evident and if it can be established, it has to be established by

lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C. The Division Bench dealing with the review proceedings clearly showed that it had overstepped its jurisdiction under Order XLVII, Rule 1, C.P.C. by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error.

It would not become a patent or error apparent in view of the settled legal position. In substance, the review Bench has re-appreciated the entire evidence, sat almost as court of appeal and reversed the findings reached by the earlier Division Bench.

Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers.

An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C. In connection with the limitation of the powers of the court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, the Supreme Court, in the case of AribamTuleshwar Sharma v. AribamPishak Sharma and others speaking through Chinnappa Reddy, J. has made the following pertinent observations:

"It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the persons seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground.

But, it may not be exercised on the ground that the decision was "erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court."

It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C.

In the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground.

So far as that aspect is concerned, it has to be kept in view that an error apparent on the face on the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points' where there may conceivably be two opinions.

In the impugned review judgment which is the basis of the ultimate consequential decision in second appeal for review, curiously enough the Division Bench having noted the limited nature of its jurisdiction under Order XLVII, Rule 1, reconsidered the entire evidence and almost sat in appeal against the findings and judgment recorded by the earlier Division Bench.

The Supreme Court is of the view that the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order XLVII, Rule 1, C.RC. by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error.

It would not become a patent error or error apparent in view of the settled legal position indicated earlier. In substance, the review Bench has re-appreciated the entire evidence, sat almost as court of appeal and has reversed the findings reached by the earlier Division Bench.

Even if the earlier Division Bench findings were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate Court. Right or wrong, the earlier Division Bench had become final so far as the High Court was concerned. It would not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers.

Who can apply for review?

Rule 1 of Order XLVII says that any person considering himself aggrieved by a decree or order, etc. may apply for a review of judgment. The aggrieved person is one who has suffered a legal

grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to.

A legal representative may apply for a review. The court cannot review suo motu or on its own motion nor can a superior court direct an inferior court to review its previous decision.

Application where rejected:
An application for review shall be rejected where there is no sufficient ground for review.

Application where granted:
No application for review, however, shall be granted without previous notice to the opposite party to appear and oppose the application. It shall also not be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge at the time of the passing of the decree or order, without strict proof of such allegation. (Order XLVII, Rule 4).

Where the applicant for grant of temporary injunction restraining execution of, eviction decree, had participated in the eviction suit as constituted attorney of the tenant and caretaker of disputed premises without claiming to be tenant from the landlord and the objection to execution of the eviction decree filed by his wife was rejected, there could be no basis for grant of temporary injunction to the applicant.

The grant of temporary injunction to the applicant in review petition was extraordinary, when injunction had been refused to the applicant both by the trial court and the High Court.

Where the judge, or judges, or anyone of the judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such judge or judges or any of them shall hear the application, and no other judge or judges of the court shall hear the same. (Order XLVII, Rule 5).

The intention of the Legislature was that if an error apparent on the face of the record is sought to be pointed out then rule 5 provides that the judge or judges who had fallen into the alleged error should have an opportunity to reconsider it. The period of 6 months has been provided so that even at the expiry of six months' delay if this rule could work it should be adhered to.

It cannot be construed to mean that the right of review itself would stand negatived if for some reason such judge or judges ceased to occupy the position or are not available for any length of time beyond six months. Such an interpretation would render the availability of the remedy dependent on circumstances over which an applicant has no control.

Where the application for a review is heard by more than one judge and the court is equally divided, the application shall be rejected. Where there is a majority, the decision shall be according to the opinion of the majority. (Order XLVII, Rule 6).

An order of the court rejecting the application for review shall not be appealable, but an order granting the application may be objected to at once by an appeal from the order granting the application or in any appeal from the decree or order finally passed or made in the suit.

In case the application has been rejected on failure of the applicant to appear, the court may restore the rejected application to the file on being satisfied that the applicant was prevented by sufficient cause from appearing upon such terms as to costs or otherwise as it thinks fit. (Order XLVII, Rule 7).

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. (Order XLVII, Rule 9).

Maintainability of review:
Where money suit filed by plaintiff against State specific department of Union, i.e., forest department was not impleaded, held that there was no illegality as under principle of respondent superior, Union Government was liable to the extent prescribed under Article 300 of Constitution. Such non-impleadment was mere error and not, per se amount to error apparent in face of record. Therefore, review petition was rejected.

c) 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 illegality 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 proceeding.]

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

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 proceeding.

Jurisdiction:
The word 'jurisdiction' is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in Anisminic Ltd. v. Foreign Compensation Commission [(1969) 2 A.C. 147], namely, the entitlement "to enter upon the enquiry in question". It has, as a result of a catena of Indian decisions, assumed a restricted meaning. Section 115 confers power of revision on the High Court in a case not subject to appeal thereto.

According to the Law Commission, errors of jurisdiction and errors apparent on the face of the record could be corrected under Art. 227 of the Constitution. But the third clause under S. 115 could not be covered by Art. 227, viz., when the court acts or exercises jurisdiction on the subordinate court's acting in the exercise of its jurisdiction illegally or with material irregularity.

The remedy under Art. 227 is also costly for the poor litigants, and the remedy provided in S. 115, is, on the other hand, cheap and easy. The Committee, however, felt that, in addition to the restrictions contained in S. 115, an overall restriction on the scope of the applications for revision against interlocutory orders should be imposed.

Having regard to the recommendations made by the Law Commission in its Fourteenth and Twenty-seventh Reports, the Committee recommended that S. 115 of the Code should be retained subject to the modification that no revision application shall lie against an interlocutory order unless either of the following conditions is satisfied, namely:

(i) That if the orders were made in favour of the applicant, it would finally dispose of the suit or other proceeding; or

(ii) That the order, if allowed to stand, is likely to occasion a failure of justice or cause an irreparable injury.

The Committee felt that the expression 'case decided' should be defined so that the doubt as to whether S. 115 applies to an interlocutory order may be set at rest. Accordingly the Committee

have added a proviso and an Explanation to S. 115. The proviso added to S. 115 of the principal Act renumbered as sub-s. (1) Thereof reads:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding as issue, in the course of a suit or other proceeding, except where-

(a) The order, if it has been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) The order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. [Under the Code of Civil Procedure (U.P. Amendment) Act No. 31 of 1978, S. 115 of the Code of Civil Procedure, 1908, stands repealed and substituted as under:

"The High Court in cases arising out of an original suit or other proceedings of the value of rupees twenty thousand and above, including such suits or other proceedings instituted before August 1, 1978, and the District Court in any other case, including a case arising out of an original suit or other proceedings instituted before such date, may call for the record of any case which has been decided by any court subordinate to such High Court, or District Court, as the case may be, 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 or the District Court, as the case may be, may make such order in the case as it thinks fit:

Provided that in respect of cases arising out of original suits or other proceedings of any valuation, decided by the District Court, the High Court alone shall be competent to make an order under this section:

Provided further that the High Court or the District Court shall not, under this section, vary or reverse any order deciding an issue, made in the course of a suit or other proceeding, except where (i) the order, if so varied or reversed, would finally dispose of the suit or other proceeding; or (ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

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

The above provision, as stated above, extends only to Uttar Pradesh, Lucknow December 21, 1990

In section 115 of the Code of Civil Procedure, 1908, hereinafter in this chapter referred to as the said Code:

(a) For the words "of the value of twenty thousand rupees and above, including such suits or other proceedings instituted before August 1, 1978", the following words shall be substituted, namely, "Of the value exceeding one lakh rupees or such higher amount not exceeding five lakh rupees as the High Court may from time to time fix, by notification published in the Official Gazette, including such suits or other proceedings instituted before the date of commencement of the Uttar Pradesh Civil Laws (Amendment) Ordinate, 1990, as the case may be, the date of commencement of such notification."

(b) After the second proviso, the following proviso shall be inserted, namely:

"Provided also that where a proceeding of the nature in which the District Court may call for the record and pass orders under this section was pending immediately before the relevant date of commencement referred to above, in the High Court, such Court shall -proceed to dispose of the same." The above provisions extend only to Uttar Pradesh. The High Court's revisional powers cannot be invoked unless the following conditions exist:

(1) There must be a case decided;

(2) The court deciding the case must be subordinate to the High Court;

(3) No appeal should lie to the High Court against the decision;

(4) In deciding the case the subordinate court must appear to have:

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

(b) Failed to exercise a jurisdiction vested in it by law; or

(c) Acted in the exercise of its jurisdiction illegally or with material irregularity.

Scope:

In the exercise of revisional powers it is not the duty of the High Court to enter into the merits of the evidence; it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order. The remedy by

way of revision cannot be denied in a case where the order is not appealable and in which one or the other condition stated in S. 115 is satisfied.

Jurisdiction: Amir Hasan v. SheoBaksh:
Section 115 applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. But the mere fact that the decision of the lower court is erroneous, whether it be upon a question of fact or law, does not amount to an illegality or material irregularity.

Therefore, the High Court will not interfere in the exercise of its revisional jurisdiction merely because the lower court wrongly decides that a particular suit is barred by res judicata, or that it is barred by limitation or because it proceeds upon an erroneous construction of the various provisions of an Act.

In Amir Hasan v. SheoBaksh, [11 I.A. 237] it was emphasised by their Lordships of the Judicial Committee that where the subordinate court has jurisdiction to determine a question it has jurisdiction to decide wrong as well as right and that a wrong decision is not an illegal or materially irregular exercise of jurisdiction. The Judicial Committee or the High Court has no jurisdiction in such a case. The facts in Amir Hasan's case were as follows:

The suit was brought by the plaintiff appellant for possession on redemption of a three-fourths share in Kaka Khanpur. The first two courts decreed the suit in favour of the appellant, and the second decree became final under section 622 of Act X of 1877.

A petition was presented to the Judicial Commissioner, alleging that the first court had no jurisdiction to try the case, and asking that the record might be sent for and the decrees reversed. On the 7th February, 1880, the Judicial Commissioner dismissed the suit with costs in all three courts.

He did not find thereon that the first court had no jurisdiction, but that the courts below had exercised their jurisdiction illegally and to the material prejudice of the applicant, and thereon founded the decree appealed from.

The judgment of their Lordships of the Judicial Committee was delivered by Sir Barnes Peacock:

The question in this case depends upon the proper construction to be put upon Act X of 1877, section 622, and upon Act XII of 1879, section 92, by which the former section was amended. According to Act XIII of 1879, section 21, there was no appeal in this case from the Lower Court of Appeal to the Judicial Commissioner.

But section 622 of Act X of 1877 enacted that "the High Court",—and in this respect the Judicial Commissioner exercises the same powers as the High Court—"may call for the record of any

case in which no appeal lies to the High Court if the court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, and may pass such order in the case as the High Court thinks fit."

By section 92 of Act XII of 1879 that section was amended by the insertion after the words "so vested" of the following words "or to have acted in the exercise of its jurisdiction illegally or with material irregularity". The question then is, did the judges of the Lower Court in this case, in the exercise of their jurisdiction, act illegally or with material irregularity.

It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

Their Lordships therefore thought that under section 622 of Act X of 1877, as amended by section 92 of Act XII of 1879, the Judicial Commissioner had no jurisdiction in the case. Under these circumstances their Lordships would humbly advise Her Majesty to allow his appeal, and to reverse the judgment of the Judicial Commissioner, and to order the respondent to pay the costs of this appeal.

To come to an erroneous conclusion does not amount to acting with material irregularity or illegality and a court has much jurisdiction to pass a correct order as a wrong one. The court's coming to an erroneous view will not justify interference in revision under S. 115, C.P.C.

By its clauses (a) and (b), S. 115 empowers the High Court to satisfy itself: (a) that the order of the subordinate court is within its jurisdiction, and (b) that the case is one in which the court ought to exercise jurisdiction. Therefore, where the court by a wrong or erroneous finding assumes jurisdiction which it has not, or refuses to exercise a jurisdiction which it ought to exercise then the matter becomes revisable by the High Court.

The decision of the subordinate court on all questions of law and fact not touching its jurisdiction is final and however erroneous such a decision may be, it is not revisable under sub-ss. (a) and (b) of S. 115, C.P.C. On the other hand, if by an erroneous decision on a question of fact or law touching its jurisdiction, e.g., on a preliminary fact upon the existence of which its jurisdiction depends, the subordinate court assumes a jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final, and is subject to review by the High Court in its revisional jurisdiction under the sub-section.

If the jurisdiction under S. 115, C.P.C. is invoked, the application must show not only that a jurisdictional error has been committed by the court below but also that the interests of justice call for interference by the High Court. The powers of the court under S. 115 of the Code are to

be exercised in its discretion, and discretionary powers should be exercised in the interests of justice.

The power to interfere under S. 115 is much circumscribed. Unless the lower appellate court had exercised jurisdiction where it had none or exercised it illegally or with material irregularity, the High Court cannot interfere with the order of the lower appellate court even when the order sought to be revised be erroneous or not in accordance with the law.

The words 'acting illegally' would mean acting in breach of some provisions of law and the words 'acting with material irregularity[1] would mean committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision.
Therefore, it is only when a court decides a case perversely that it can be said to act illegally or with material irregularity in the exercise of its jurisdiction and the other errors of questions of law or procedure are outside the scope of cl. (c) of S. 115 of the Civil Procedure Code. Where a lower court passes an order in exercise of its jurisdiction, the High Court will not interfere with it in revision.

The grant of ad interim injunction is within the discretion of the trial court. Where it has been shown that ad interim injunction had been granted by the said court against the principles governing the same, it cannot be said that the court below, while granting the ad interim injunction, had acted illegally or with material irregularity in exercise of its jurisdiction.

Where the trial court has the jurisdiction to reject a document or impound it was also the jurisdiction to receive it on recording reasons showing as to why its receipt as evidence was justified and it takes the view that the document concerned can be easily procured for purposes of litigation and that its genuineness is not beyond suspicion, the order passed by it refusing to take the document on record does not call for any interference under S. 115.

Error of law:
The section is not directed against conclusion of law or fact in which the question of jurisdiction is not involved. Error of law is by itself no ground for revision unless it either results in a failure or wrong exercise of jurisdiction or amounts to a material irregularity in the exercise of jurisdiction.

Where a decree is erroneous in the sense that some technical rule of law has been overlooked which could have been remedied, the High Court does not ordinarily interfere in revision, but where there is a prohibition in a statute and a claim could not have been decreed according to law, the High Court would not be justified in importing any abstract considerations of justice and overlooking the principle that justice should be administered according to law.

The powers of the High Court in revision are not available for correction of errors of law, however gross those errors may be, and whatever may be the result of those errors on the merits of the case. Errors of 'subordinate courts, however gross and palpable they may be, would escape correction in the court of revision. The cause of justice has no place in the framework of the revisional power and cannot prevail.

This power, of the High Court is only available where the High Court could legitimately hold that the court below had exceeded its jurisdiction or had refrained from exercising a jurisdiction vested in it or it acted illegally or with material; irregularity in the exercise of that jurisdiction, namely, committed such an error of procedure, a mandatory procedure, and the error had resulted in failure of justice or some such thing.

Section 115 empowers the High Court to satisfy itself on three matters : (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

And if the High Court is satisfied on these three matters it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. An erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under S. 115, C.RC.

The trial court had jurisdiction to pass the order for discovery. Even if lack of jurisdiction is assumed to result from every material error of law even an error of law within the jurisdiction in the primitive sense of the term we do not think the order was vitiated by any error of law.

The rejection of the application for time and the consequent dismissal of the petition for permission to sue in forma pauperis can hardly be said to sound in jurisdictional error even in its extended sense. We are also not satisfied that the refusal to adjourn occasioned any failure of natural justice so as to render the order a nullity. Nor is there anything to show that in rejecting the application for time, the court acted illegally or with material irregularity in the exercise of its jurisdiction.

The power of the High Court under S. 115 is exercisable in respect of 'any case which has been decided'. A case can be said to have been decided when any rights or obligations for the parties sire adjudicated upon. By permitting a party to file evidence in the appeal, no court decides any

question relating to right or obligation of the parties in controversy. An admission of evidence even in appeal does not decide any right of the parties.

By evidence the truth of a fact which is submitted to investigation is established or disproved. That is the precise reason that a rule of evidence is defined as a principle which expresses the mode or manner of proving the fact and circumstances upon which a party relies to establish a fact in dispute.

Hence by deciding to take evidence in the appeal, the court below cannot be said to have adjudicated upon any of the rights of the parties. The admission of additional evidence in the appeal cannot amount to case decided. Non-interference will not cause a denial of justice or irremediable harm to the applicant.

The Supreme Court has observed in Major S.S. Khanna v. F.J. Dhillon, A.I.R. 1964 S.C. 497, that the exercise of jurisdiction under S. 115, C.P.C., is discretionary and that the court is not bound to interfere merely because the conditions in clauses (a), (b) and (c) of S. 115 are satisfied. The fact that another remedy is available to an aggrieved party by way of any appeal from the ultimate judgment or decree, is one of the relevant considerations for refusing to exercise discretion under S. 115, C.P.C.

If once a revision petition has been admitted by the High Court, it cannot be dismissed later on the ground that it was not filed by a duly authorised person/Under S. 115, the High Court can call for-the record of the case suo motu and revise the same if ,it finds that the subordinate court exercised a jurisdiction not vested in it or failed to exercise the jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with material irregularity. Therefore, if the case is not presented by a duly authorised person and the court finds that the impugned order falls within the purview of S. 115, it can suo motu revise it.

The High Court is fully justified in rejecting the findings of both the authorities below, even though it is a finding of fact if these authorities have based their findings on “conjectures and surmises and they have lost sight of relevant pieces of evidence which have not been controverted.

After the Amendment of 1976 in S. 115, C.P.C., the nature of the section has changed and the court under proviso (b) got ample power to interfere with the orders of the lower court for the ends of justice and to avert failure of justice which might cause irreparable injury to any party against whom the order is made.

It may be pointed out that the jurisdiction under S. 115 of the Code is a discretionary one. It is limited in scope and covers only jurisdictional errors. Further restrictions have also been placed in the exercise of the discretionary jurisdiction and even where the conditions for the exercise of

the revisional jurisdiction are fulfilled the court in exercise of its discretion in a judicial matter may still refuse to interfere.

Where the Civil Judge exercised jurisdiction not vested in him by statute and not followed the procedure laid down by the statute and thus committed illegality in exercise of his jurisdiction, the High Court must rectify the error in exercise of its revisional jurisdiction.

In accordance with the provisions of S. 115, C.P.C. it is necessary to establish three conditions precedent for calling upon and for requesting the revisional court to exercise the revisional jurisdiction under S. 115 of the Code and the fourth condition is to be considered by the court while making up its mind whether to interfere with the order under challenge or not. These conditions are as under:

(a) That the order impugned amounts to be a case decided;

(b) That the order impugned is not directly liable to be challenged by way of appeal from the order itself before the same court before which the revision has been filed;

(c) That the order impugned suffers from jurisdictional error, i.e.,:

(i) Either excess of jurisdiction, i.e., exercise of jurisdiction by the court not vested;

(ii) Failure or illegal refusal to exercise the jurisdiction vested or the court below is alleged and proved to have acted illegally or with material irregularity in exercise of its jurisdiction in passing the order impugned.

If these conditions are shown to exist even then the Court is not bound to interfere with an order impugned under S. 115 of the Code, instead as per proviso I to S. 115 a rider has been put that the Court will not interfere with the order impugned under S. 115 of the Code unless the case is one which comes within one of the two exceptions provided under proviso II to S. 115 of the Code.

It has also been laid down in S. 115, C.P.C., vide proviso thereto that the power under S. 115, C.P.C. shall not be exercised ordinarily even upon the establishment and fulfilment of the conditions mentioned in S. 115 including the condition of error of jurisdiction unless and until the case comes within one of the two exceptions provided in that proviso, namely, that the order impugned if it had been made in favour of the reverisionist applicant the same would have resulted in final disposal of the case or the order is of such a nature that if it is allowed to stand it is likely to cause irreparable loss and injury to the party concerned who had filed the revision.

It has been laid down in S. 115, C.P.C. as amended by U.P. Act 31 of 1971 vide proviso thereto that the power under section 115 of the Code of Civil Procedure shall not be exercised ordinarily even upon the establishment and fulfilment of the conditions mentioned in S. 115 including the condition of error of jurisdiction unless and until the case comes within one of the two exceptions provided in that proviso, namely, that if the order impugned would have been in favour of the revisionist applicant, the same would have resulted in final disposal of the case or the order is of such a nature that if it is allowed to stand it is likely to cause irreparable loss and injury to the party concerned who had filed the revision.

Discretionary order:

Again the exercise of revisional jurisdiction under this section is purely discretionary and even if the lower court has acted without jurisdiction or acted illegally in the exercise of jurisdiction, the High Court will not interfere if the result of an irregularity has been to promote justice. The powers will only be exercised for the prevention of injustice. Section 115 confers powers to be exercised with a view to subserve and not to defeat the ends of justice.

Then, the revisional powers will not ordinarily be exercised so long as there is any other remedy available either by suit or appeal. The High Court will not interfere if another convenient remedy is open to the applicant. But it may interfere if such course is necessary in the interests of justice.

There is always room for an honest difference of opinion as to whether a certain set of facts amounts to sufficient cause or not. The courts below must have the discretion to decide the question for themselves, and unless the court below travels beyond the limits within which discretion may be reasonably exercised or, in other words, unless it can be said that it has taken a perverse or absurd view, the exercise of the discretion by it will not be interfered within appeal and much less in revision.

Although an appellate or revisional court has unquestioned right to review or interfere with the orders of subordinate courts, it will not do so unless the subordinate court acted perversely or took a wrong view.

When it is said that a certain matter is in the discretion of the court, what is really meant is that the court has to apply the rule of reason and justice and not to act according to private or personal opinion; it is the law and not humour which guides the court and the possessor of discretion must put his mind to the case and really use judgment in coming to a decision; he must not approach the matter with his mind as if already made up.

Exercise of discretion must be legal and regular, not arbitrary, fanciful or vague. To command respect, discretion should be informed by traditions, methodised by analogy and disciplined by system. It is exercised largely on the facts and circumstances of a given case, with the result that

ordinarily it is neither possible nor feasible to formulate a rigid formula capable of fitting all circumstances.

It is only when some illegality or material irregularity is committed by the subordinate court in the manner of the exercise of its jurisdiction, that is, if some procedural errors in exercise of its jurisdiction are committed resulting into any illegality or material irregularity, such error can be rectified by the High Court, while exercising the powers under S. 115 (1) (c), C.P.C. After the amendment of S. 115 by the C.P.C. Amendment Act No. 104 of 1976, a proviso has been added in sub-section (1). Even if the order falls under any of the clauses of S. 115 (1), the High Court will have no jurisdiction to vary or reverse any order unless the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. There are two clauses of the proviso. In view of clause (b) of this proviso, the petitioner is further required to show that the impugned order would occasion a failure of justice or would cause an irreparable injury to him.

There is no hard and fast or an inflexible rule that if a point has not been urged in the courts below, that point may not be allowed to be raised for the first time in revision petition. As the remedy by way of revision is discretionary and not a matter of right, the court may, looking into the facts and circumstances of each case, allow any point to be raised for the first time in the revision petition.

One of the purposes and objects of allowing amendment of the plaint is to avoid multiplicity of suits and the court has discretion to allow an amendment; of course the discretion has to be used in judicial manner. The considerations, which normally weigh with the court, are whether the amendment can be allowed without working injustice to the other side and whether award of cost can compensate the opposite party. Normally the

High Court does not interfere under S. 115, C.P.C. if the lower court in exercise of its judicial discretion allowed the amendment.

The court should be extremely liberal in granting prayer for amendment of pleading unless serious injustice or irreparable loss is caused to the other side. A revisional court ought not to lightly interfere with a discretion exercised in allowing amendment in the absence of cogent reasons or compelling circumstances.

In the case of Sahdeo v. Satya Ranjan Ghosh, the temporary injunction was refused by the trial court but the same was granted in appeal by the appellate court. The High Court allowed the revision and observed: “There is a difference between the appellate powers in ordinary appeals and in appeals against a discretionary order. In ordinary appeals the appellate court can form its own opinion on questions of fact and law, but not so in appeals against a discretionary order. The appellate court cannot upset the discretion exercised by the trial court simply because sitting as a

trial court it itself would have taken a different view. It can interfere with the discretion exercised by the trial court only if that court had acted arbitrarily or against the well-established principles."

Illegal or irregular order of lower court bringing out just result:
It is well established that the High Court is not bound to interfere under S. 115, C.P.C. except in aid of justice. Thus where the order of a subordinate court has brought about a just result and where the setting aside of the order would bring about an unjust result, the High Court would not exercise its discretion under S. 115, C.P.C., and interfere with such order, even though the order suffers from an illegality or irregularity.

Meaning of "Case decided":
The term "case decided" used in S. 115, C.P.C. is not equivalent of a suit or appeal decided. The word "case" is something wider but not wide enough to include every order passed by a court during the pendency of a suit. It would include a decision on any substantial question in controversy between the parties affecting their rights, even though such order be passed in the course of the trial of the suit.

The decision of part of a case or purely an ad interim order that does not effectually dispose of the matter before the court would not be "case decided". A Full Bench of the Allahabad High Court has held that an order granting an application for leave to sue in forma pauperis is a "case decided" within the meaning of S. 115, C.P.C. and hence can be revised.

Numerous cases of the various High Courts have taken different views in regard to the interpretation of the expression "case decided". The decisions of the Allahabad and Lahore High Courts had taken a narrower view. So did the Rajasthan High Court.

The other High Courts have taken a liberal view. The narrower view was canvassed for acceptance of the Supreme Court in Major S.S. Khanna v. F.J. Dhillon, but it was not ' accepted.

"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 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.

In Baldevdas Shivlal v. Filmistan Distributors (India) Pvt. Ltd., it was held:

"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 S. 115 of the Code of Civil Procedure."

In British India Corporation Ltd., Kanpur v. G.S. Nigam, after a consideration of the cases cited, it was held that the words "case decided" mean the adjudication of a controversy as to the rights and obligations of the parties in the suit, and it must necessarily touch on the right and obligation in controversy in order to constitute the decision of deciding a case.

An order passed under Order VI, Rule 17, C.P.C. allowing or refusing to allow amendment is 'case decided' within the meaning of that expression in S. 115. The High Court will however not interfere except when the case falls under the proviso appended to S. 115, C.P.C.

Where in a suit for recovery of dues filed against a partnership firm and its partner the plaintiff sought leave to add a new defendant on the ground that the assets and liabilities of the defendants on record were taken over by the new defendant firm, the rejection of the leave to amendment could occasion an irreparable injury to the revisionist plaintiff within the meaning of the proviso to S. 115, C.P.C.

Power of the court to add or refuse to add a party to a proceeding is a discretionary power vested in the court, but the discretion must be a judicial discretion and if judicial discretion has been exercised either in favour of adding a party or refusing to add a party under Order I, Rule 10 considering all the facts and circumstances of the case, the High Court, in revision, will not interfere with the exercise of such a judicial discretion.

S.S. Khanna v. F.J. Dhillon:
The High Court is not obliged to exercise its jurisdiction when a case is decided by a subordinate court and the conditions in cl. (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.

If an appeal lies against the adjudication directly to the High Court or to another court from the decision of which an appeal lies to the High Court, it has no power to exercise its revisional jurisdiction, but where the decision itself is not appealable to the High Court, directly or

indirectly, exercise of the revisional jurisdiction by the High Court would not be deemed excluded.

Wrong exercise of a jurisdiction:
Where a court has acted by inventing a rule of procedure for itself which is not warranted by law, the High Court is not only competent to interfere but should interfere in its revisional jurisdiction.

So the High Court can interfere where a civil court has wrongly entertained a suit cognizable by a revenue court, or where the lower court has exercised a jurisdiction not vested in it by law under a misconception of the law of limitation.

Declining jurisdiction:
An order declining to exercise jurisdiction will be interfered with by the High Court in revision.

Illegally or with material irregularity:
The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. If the lower court had jurisdiction to decide the question before it and there is no irregularity or illegality in the exercise of that jurisdiction its decision is not open to revision even if it is a wrong decision.

The words 'illegally' and 'material irregularity' in S. 115 do not cover either errors of fact or of law. These words do not refer to the decision arrived at but to the manner in which it is reached. The errors as contemplated relate to material defects of procedure.

Where the lower appellate court did not express an opinion upon a matter which it was not invited to consider it cannot be said to have acted illegally within the meaning of S. 115 of the Code.

If the court below has exercised its jurisdiction in the prescribed way but its decision is based upon erroneous conclusions of facts or law, it cannot be said to have acted illegally or with material irregularity in the exercise of its jurisdiction. If the court below had jurisdiction to decide the question before it and there is no irregularity or illegality in the exercise of that jurisdiction, its decision is not open to revision even if it is a wrong decision.
Section 115 (c) of the Code applies when the court 'acts' illegally or with material irregularity in exercise of its jurisdiction. It cannot apply to cases where the court merely comes to a wrong decision on a question of fact or of law.

The sub-section is limited to that class of cases where the court having jurisdiction violates any rule of law or procedure prescribing the mode in which such jurisdiction is to be exercised.

Section 115 (c) does not provide for revision of wrong decisions of law if those decisions are not vitiated by any 'act' of the court which is illegal or materially irregular.

There is no justification for the view that clause (c) of S. 115 is intended to authorise the High Court to interfere and correct gross and palpable errors of subordinate courts so as to prevent gross injustice in non-appealable cases. It only applies to cases in which no appeal lies, and where the Legislature has provided no right of appeal the manifest intention is that the order of the trial court, right or wrong, shall be final.

The section empowers the High Court to satisfy itself upon three matters, viz., (a) that the order of the subordinate court is within its jurisdiction, (b) that the case is one in which the court ought to exercise jurisdiction, and (c) that in exercising jurisdiction the court has not acted illegally that is in breach of some provision of law, or with material irregularity.

If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law. Where there is a wilful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

Where the court below did not at all apply its mind to the relevant provisions of an enactment, it has been held that there was material irregularity in the exercise of its jurisdiction by the court and a revision lay to the High Court under S. 115 of the Code.

In case the revisional court comes to the conclusion that the finding of fact is vitiated by an error of law, it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guide-lines. It cannot enter into the evidence, assess it and determine an issue of fact.

A finding on the question of benami is one of fact and such finding cannot be interfered with in revision. There is no jurisdictional error or material irregularity.

Messrs. D.L.F. Housing and Construction Co. (P.) Ltd. v. Sarup Singh:
While exercising the jurisdiction under S. 115, C.P.C., it is not competent to the High Court to correct errors of fact however gross or even errors of law unless they said errors have relation to the jurisdiction of the Court to try the dispute itself. The words "illegally" and "with material irregularity" as used in cl. (c) do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached.

The errors contemplated by this clause may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law.

Clause (c) is not confined in its application to defects in procedure alone and it would still be open to the High Court to interfere in revision with decisions involving illegality as distinguished from mere errors of law or fact. Illegality means something in breach of some provision of law.

M.L. Sethi v. R.P. Kapur:

The word 'jurisdiction' is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in Anisminic Ltd v. Foreing Compensation Commission, namely, the entitlement "to enter upon the enquiry in question." If there was an entitlement to enter upon an enquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction.

The dicta of the majority of the House of Lords in the above case would show the intent to which 'lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of 'jurisdiction'.

The effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdiction.

This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "imposing an unwarranted condition" or "addressing themselves to a wrong question."

Why is it that a wrong decision on a question of limitation or res judicata was treated as a jurisdictional error and liable to be interfered with in revision? The reason can only be that the error of law was considered as vital by the court. And there is no yardstick to determine the magnitude of the error other than the opinion of the court.

Where the Court declined to issue ad interim injunction ex parte and directed notice to be issued to the opposite party for deciding the application for temporary injunction, it could not be said that the trial court had either "exercised a jurisdiction not vested in it by law" or had "failed to exercise a jurisdiction so vested", within the meaning of clauses (a) and (b) of S. 115 and, hence, no revision was maintainable against the order refusing to issue ex parte injunction.

The trial Court obviously had jurisdiction to issue or not to issue ad interim injunction ex parte and also to issue notice to the opposite party before deciding the application for temporary injunction without issuing any ad interim injunction ex parte.

The trial court, therefore, in passing the impugned order has without doubt exercised a jurisdiction which had been vested in it by law and accordingly the revisional jurisdiction of the High Court can be invoked vis-a-vis the impugned order only if the trial court, in passing the impugned order, has acted "illegally" "or with material irregularity" within the meaning of cl. (c) of S. 115, C.P.C. But there is consensus of authority commencing from Amir Hassan Khan's case [(1884) I.L.R. 11 Cal. 6] that the trial court has jurisdiction to decide the case, and even if it decided wrongly it did not exercise its jurisdiction illegally or with material irregularity and accordingly the revisional jurisdiction of the High Court could not be invoked vis-a-vis the order.

Where the amendment in the plaint was rightly refused and the order refusing the amendment did not occasion any failure of justice or cause any irreparable injury to the plaintiff, no revision against the order under S. 115 is maintainable. If there was any defect in the plaint the plaintiffs have only themselves to blame for it, and if they felt that the suit was bound to fail on account of some technical defects which they wanted to overcome by the amendment the better course for them to adopt would have been to apply for withdrawal of the suit with permission to bring a fresh suit on the same cause of action or partly on a new cause of action, provided the law of limitation did not bar it and the plaintiffs could show that they were acting bona fide and not mala fide.

Where an order rejecting the plaint under Order VII, Rule 11, C.P.C. was passed in exercise of revisional jurisdiction by the District Judge under S. 115 (High Court amendment), it is not "a decree passed in appeal" as contemplated by S. 100 and therefore an appeal against the said order is not legally maintainable.

The jurisdiction of the High Court under S. 115 is a limited one and it can interfere with an order of a subordinate court if question of jurisdiction is involved therein. It cannot interfere with an order because an erroneous view on a question of law has been taken by the subordinate court.

While exercising its jurisdiction under S. 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless they said errors have relation to the jurisdiction of the court to try the dispute itself.

An erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under S. 115, C.P.C. The construction of a decree like the construction of a document of title is no doubt a point of law. Even so, it cannot be held to justify the exercise of the High Court's revisional jurisdiction under S. 115 of the Code because it has no relation to the jurisdiction of the Court.

When the question is one relating to pure appreciation of evidence, it is not a case for interference in civil revision and it cannot be said that the lower court has exercised its jurisdiction illegally or with material irregularity. In other words, it is not open to the High Court in exercise of its revisional jurisdiction to question the finding of fact recorded by a subordinate court.

Revisional jurisdiction shall be exercised in cases involving questions of jurisdiction, i.e., questions regarding the irregular exercise or non-exercise of jurisdiction or the illegal assumption of jurisdiction by a court and is not directed against conclusion of law or fact in which questions of jurisdiction are not involved.

Maintainability of revision:
Term "other proceedings" used in proviso would not be proceeding in suit but proceeding other than suit. Order made in application for temporary injunction could not be treated as order by which proceedings for granting temporary injunction was finally disposed of. Held, that revision against such order was not maintainable. But High Court in those circumstances could invoke Article 227 of Constitution of India.

Scope of power to recall order:
Where there was closure of entire evidence of plaintiffs side by the Rent Controller while rejecting her son's affidavit for recording evidence on her behalf. Held, that serious error had been committed by the Rent Controller by closing entire evidence. As such, recall of said order on ground of mistake or error by the Rent Controller by exercising inherent powers could not be viewed as an act of review.

Inherent power could be exercised for purpose of consolidation of suits:
The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be under the inherent powers of the Court flowing from Section 151 of the C.P.C. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Appointment of receiver for execution of decree:
Where decree-holder was successful in all proceedings one after another. There was appointment of Receiver for the purpose of execution. Held, that Court has inherent jurisdiction to pass order for appointment of Receiver on application under Section 151 inspite of existence of provision in Section 51 (d), C.P.C., 1908."

Amendment of decree allowed:
Where in a suit for recovery of money, but due to mistake, office has drafted decree as preliminary decree in mortgaged suit. Held, that it could be corrected by High Court in

application made even after 11 years of said decree as there has been no prescribed period of limitation to file the said application.

Correction of errors in judgment:
Where in a suit for possession decree directing non-applicant to refund security deposit was issued. But due to inadvertent typographical error, it was typed defendant in place of plaintiff which stood corrected by subsequent order.

Non-applicant, plaintiff claimed to correct in judgment of negate direction of refund of security deposit was not a case of correction of inadvertent error or omission. Therefore, it could be corrected and plaintiff could prefer appeal against the same.

DIFFERENCES BETWEEN

1. Revision and Review of Judgment:
1. The power of revision is exercised by the court superior to the court which decided the case but the power of review is exercised by the very court which passed the decree or order.

2. The power of revision is conferred on the High Court only, which is not so in the case of review. Any court can review its judgment.

3. Revisional powers by the High Court can be exercised only in a case when there is no appeal to the High Court, but review can be made even when appeal lies to the High Court therein.

4. The grounds on which the powers of revision and review can be exercised are different. The ground for revision relates to jurisdiction, viz., want of jurisdiction, failure to exercise a jurisdiction, or illegal or irregular exercise of jurisdiction, while the ground of review may be

(a) The discovery of new and important matter or evidence,

(b) Some apparent mistake or error on the face of the record, or (c) any other sufficient reason.

5. In revision the High Court can, of its own accord, send for the case, but for review an application has to be made by the aggrieved party.

6. No appeal lies from an order made in the exercise of revisional jurisdiction, but the order granting review is appealable.

2. Appeal and Reference:
1. A right of appeal is a right conferred on the suitor, while the power of reference is vested in the court.

2. Reference is always made to the High Court, while an appeal is preferred to a superior court which need not necessarily be High Court.

3. The grounds of appeal are wider than the grounds of reference.

4. Reference is made in a pending suit, appeal or execution proceeding in order to enable the court to arrive at a correct conclusion, while an appeal is preferred after the decree is passed or an appealable order is made.

3. Appeal and Revision:

1. An appeal lies to a superior court, which may not necessarily be a High Court; but an application for revision lies only the High Court.

2. An appeal lies only from appealable orders and decree, but an application for revision can be made only when the relief by way of appeal to the High Court is not available.

3. A right of appeal is a substantive right given by statute. There is no right of revision. It is only a privilege. A party may move the High Court to invoke its revisional jurisdiction or the High Court may of its own motion exercise revisional jurisdiction, but the power is discretionary.

4. An appeal abates if the legal representatives of a deceased party are not brought on the record within the time allowed by law. A revision does not abate in case of the death of a party even if the legal representatives are not brought on the record. The High Court has a right to bring the proper parties before the Court at any time.

5. The grounds of appeal and revision are different. An application in revision can lie only on the ground of jurisdiction, and the High Court in exercise of its revisional jurisdiction is not a court of appeal on a question of law or fact. In an appeal the court has the power to decide both questions of fact and law.

6. Section 115 does not require that there should be an application in revision. The High Court can move of its own accord in exercising revisional jurisdiction. In case of appeal there must be a memorandum of appeal filed before the same can be considered by the appellate court.

7. An essential distinction between an appeal and a revision is based on differences implicit in the said two expressions. An appeal is continuation of the proceedings. In effect, the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have; it has not the power to review the evidence unless the statute expressly confers on it that power. (State of Kerala v. K.M. ChariaAbdidla& Co., A.I.R. 1965 S.C. 1585).

4. Second Appeal and Revision:

1. A second appeal lies to the High Court from every decree passed in appeal by a subordinate court only if the High Court is satisfied that the case involves a substantial question of law. The grounds of revision are, however, different. They relate to jurisdiction.

2. The revisional powers of the High Court can be invoked in cases which no appeal or second appeal lies to the High Court. This is not so in second appeal.

3. The Court will not in its revisional jurisdiction enter into merits of the case however erroneous the decision of the lower court is on an issue of law or of fact but will interfere only to see that requirements of law have been properly obeyed by the court whose order is the subject of revision.

Although no second appeal can be preferred on a question of fact yet when such an appeal is already before the High Court, it may determine issues of fact where such issues have not been determined provided that the evidence on the record is sufficient for such determination.

4. In revisional matters the High Court may decline to interfere if it is satisfied that substantial Justice has been done. But on questions of law in second appeal, no discretion vests in the High Court and it has no right to decide merely on equitable grounds.

5. Reference and Revision:

1. In reference the case is referred to the High Court by a court subordinate to it. On the other hand, the party aggrieved moves the High Court in revision for the exercise of its revisional jurisdiction, or the High Court may sua motu send for the case and examine the record.

2. The ground for reference is the entertainment of some reasonable doubt by the Court trying the suit, appeal or executing the decree with regard to a question of law or usage having the force of law. The ground for revision, on the other hand, relates to jurisdiction, viz., want of jurisdiction, failure to exercise a jurisdiction or illegal or irregular exercise of jurisdiction.

6. Reference and Review:

1. In reference the subordinate court refers the case to the High Court while in review an application is made by the aggrieved party.

2. The High Court alone can decide matters on reference while an application for review is made to the court which passed the decree or made the order.

3. Reference is made during the pendency of the suit, appeal or execution proceedings, while application for review is made to the court after it has passed the decree or made the order.

4. The grounds of reference and review are different. Reference is made by the court trying the suit, appeal or executing the decree when it entertains reasonable doubt with regard to any question of law or usage having the force of law. The grounds of review may be the discovery of new and important matter or evidence, some apparent mistake or error on the face of the record or any other sufficient reason.

7. Review and Appeal:

1. An application for review lies to the same court while an appeal lies to a higher court.

2. The main object of granting a review of judgment is reconsideration of the same matter by the same Judge, while an appeal is heard by another Judge.

3. The grounds of review are narrower than the grounds of appeal.

4. There is no second review, but there is second appeal on a substantial question of law.

Text books:

1. Mulla – Code of Civil Procedure

2. Sarkar's Code of Civil Procedure

References:

1. Code of Civil Procedure, 1908 (Relevant Provision)

2. M.P. Tandon – Code of Civil Procedure