

**Pyarchand and ors. Vs. Dungar Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/752068](http://sooperkanoon.com/752068)

**Court :** Rajasthan

**Decided On :** Jul-18-1952

**Reported in :** AIR1953Raj90

**Judge :** Wanchoo, C.J. and; Bapna, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

**Appeal No. :** Civil Revn. No. 83 of 1950

**Appellant :** Pyarchand and ors.

**Respondent :** Dungar Singh

**Advocate for Def. :** Sumerchand, Adv.

**Advocate for Pet/Ap. :** L.N. Chhangani, Adv.

**Disposition :** Revision dismissed

**Judgement :**

Wanchoo, C.J.

1. This is a revision by Pyarchand and others and has arisen in the following circumstances:

2. Dungarsingh, opposite party, filed a suit against Pyarchand and others in October 1944 praying that a certain arbitration award dated 20-4-1944, may be ordered to be filed and a decree passed in accordance with it. The parties are descended from a common ancestor, Dungarsingh belonging to one branch and the applicants Pyarchand and others belonging to another. There were disputes between the parties about partition of their ancestral property and litigation was going on. In one such litigation, there was a revision to the High Court of the former State of Mewar. In the course of the proceedings in the High Court, parties appointed one Tejsingh Kothari as arbitrator to arbitrate all disputes between them which were on that date pending in courts. It was also provided that those disputes between the parties which were not then pending in Courts would also be decided by this arbitrator. The arbitrator gave an award on 20-4-1944 and filed it in the High Court at Udaipur on the same day. Thereafter Dungarsingh applied to the High Court at Udaipur for passing a decree in terms of the award on 1-7-1944. That application was disposed of by the High Court in September 1946 and the parties were directed to approach directly the Courts where litigation was pending.

In the meantime, the present suit was filed by Dungarsingh in the Court of the District Judge at Udaipur with a certified copy of the award on a court-fee stamp of Rs. 5/-. There was a report by the office that the court-fee was insufficient and the application was returned to Dungarsingh on 31-10-1944. He presented it again on 28-11-1944 and contended that the court-fee paid was sufficient. This question was agitated before the District Judge and on 21-2-1945, he ordered that the case be registered subject to arguments being heard later on the question whether the court-fee paid was deficient. When the present applicants appeared before the District Judge, they opposed the application on the grounds of limitation and insufficiency of court-fee among other grounds.

The District Judge decided that the court-fee paid was sufficient and that the application was not barred by limitation, and ordered the proceedings to go on. Thereupon a revision was filed in the High Court of the former State of Mewar on 10-2-1948 against this order. That revision came to this Court on its establishment and was put up for hearing before a learned single Judge on 12-1-1951.

He then made a reference to a Division Bench with the following order:

'In this revision petition intricate and important points of law are involved. The first is whether or not the order sought to be revised decides a case and whether or not a revision petition is competent against it.

The second is whether the application of the non-petitioner in this revision petition for filing of the award was an application relating to matters in respect of which there was no case pending before the Court and whether that application was governed by Article 32, Mewar Limitation Act. It is proper that the points are decided by a Division Bench.'

3. The matter then came up for hearing before a Division Bench. As by that time the learned Judge, who had made the reference, was no longer on the Bench of this Court, it was ordered by the Chief Justice on 19-3-1952 that the whole case will be decided by the Bench before which the reference was pending. The whole case is, therefore, now before this Bench for decision.

4. The first question which has been argued at length is whether the order sought to be revised decides a case and whether a revision petition is competent against it. I, therefore, propose to decide this question first before taking up the other question that has been referred by the learned Judge as well as the other I points that arise in this case.

5. This question raises generally the scope of Section 115, Civil P. C. and the circumstances in which it is competent for the High Court to entertain a revision from an order of the lower Court. Section 115 is as follows:

'The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.'

6. This section may be divided into two parts. The first part provides when a High Court may entertain a revision, while the second part gives the nature of the orders in which alone the High Court can interfere. I am here concerned with the first part of the section. So far as the second part is concerned, it is enough to say that it is only when a subordinate court has either exercised a jurisdiction not vested in it or has not exercised a jurisdiction vested in it or has acted illegally or with material irregularity in the exercise of its jurisdiction that the High Court can interfere. It is clear, therefore, that the nature of the order should be such as to be concerned with jurisdiction; if the order in revision has nothing to do with a question of jurisdiction, either with its exercise or its non-exercise or illegality or material irregularity in its exercise the High Court will not interfere and consequently not entertain the revision.

But before the High Court goes into the question whether the order is of this nature the preliminary conditions mentioned in what I have called the first part of Section 115 have to be fulfilled. These preliminary conditions are three in number, (1) there should be a case decided, (2) the decision should be of any court subordinate to the High Court and (3) no appeal should lie -from that decision to the High Court. If all the three conditions are satisfied, the High Court will be competent to see whether the necessary requisites of what I have called the second part of the section are present. But if any of these three conditions is absent, the High Court will not be competent to entertain the revision, even though the point raised in the revision is a question of jurisdiction and is covered by Clause (a), (b) or (c) of this section. The exact point which I have to decide in this case is whether the High Court is competent to entertain this revision and I have, therefore, to see whether all the three conditions mentioned above are satisfied.

7. The second condition is obviously satisfied because the order is of a Court subordinate to the High Court, and it, therefore, remains only to consider whether

the order amounts to a case which has been decided and in which no appeal lies to the High Court. Unless both these conditions are fulfilled, the revision would not be competent. This analysis, therefore, shows that the order which is brought in revision must not only be what is known as a case decided but also be one in which no appeal lies to the High Court. I have, therefore, first to see whether the order in question is a case decided. This matter has been a subject of innumerable decisions of various Indian High Courts which are conflicting in many ways. The difficulty has arisen mainly because the word 'case' has nowhere been defined in the Code. But it has generally been held that the word 'case' has a wider meaning than the word 'suit' or 'appeal'.

As far back as 1885, the matter came up before a Full Bench of the Allahabad High Court and the exact point for decision was whether an order rejecting an application for permission to sue as a pauper could be revised. The learned Judges were unanimous that in that particular case, there was no illegality or material irregularity in the exercise of jurisdiction and, therefore, the revision was dismissed. The majority did not decide whether it was a case decided; but Mahmud J. who was in the minority observed that the word should be understood in its broadest and most ordinary sense unless there was specific reason for narrowing its meaning. It has been held by all the High Courts that the word 'case' is wider in its meaning than the word 'suit' though most High Courts have not attempted to define it. The difficulty has arisen mostly in connection with what are compendiously called interlocutory orders made during the pendency of a suit and the question has arisen whether an interlocutory order is a case decided.

The general trend of decisions of the High Courts of Calcutta, Madras, Nagpur, Orissa and Patna has been that interlocutory orders are revisable. On the other hand, the High Courts of Allahabad and Bombay used to hold that the word 'case' did not include an interlocutory order during the pendency of a suit. But the recent trend of decisions in these Courts also is that though all interlocutory orders may not be revisable, some certainly are. The Lahore High Court once held the same view as the Allahabad High Court. But in a recent case in 1943 that Court changed its view. The Chief Court of Oudh had also adopted the view of the Allahabad High Court. It seems, therefore, necessary to examine in some detail the cases of the

Allahabad and Lahore High Courts in this connection.

8. The first case of Allahabad High Court to which I may refer is -- 'Buddhoo Lal v. Mewa Ram', AIR 1921 All 1 (FB). That was a Full Bench of five Judges and the decision was by a majority of three to two. The view taken by the majority in this case was expressed by Piggott J. at page 4 in these words after reviewing the use of the words 'case' and 'suit' in the Code:

'If this view is correct it follows that, whereas all 'cases' are not 'suits', every 'suit' is at least a 'case'. From this I would go on to conclude that where the 'case' in which the revisional jurisdiction of the High Court is invoked happens to be also a 'suit', then this suit is itself the 'case' referred to in Section 115 of the Civil P. C., which requires to be decided before the record is called for. To put the point in another way: holding that the word 'case' in the Code of Civil Procedure always includes a 'suit', I read the relevant portion of Section 115 just as if it ran:-- 'May call for the record of any suit or other description of the case which has been decided.' '

9. This was a case, where the question for decision was whether a Court at Kanpur had jurisdiction or a Court at Etawah and so obviously the requisites of the second part of the section were satisfied. The High Court, however, took the view that it was not competent to entertain the revision as this was not a 'case decided'. This may be taken to be the extreme view at one end, namely, that where there is a suit pending, no interlocutory order would be revisable.

10. This extreme view has, however, to a certain extent been modified by later decisions of the Allahabad High Court. The next case to which reference may be made is -- 'Radha Mohan v. Abbas Ali'. AIR 1931 All 294 (FB). That was also a Full Bench decision and the question that arose for consideration was whether an order setting aside an ex parte decree could be revised. In this case, emphasis was on the third condition which I have mentioned above, namely, in which no appeal lies to the High Court. It was held that under Section 105(1) the propriety of the order setting aside an ex parte decree cannot be set forth as a ground of objection in the memorandum of appeal from the decree ultimately passed in the suit and consequently, it was held that the order in question was revisable. It may be mentioned that this case was not in conflict with the earlier decision in

'Buddhoo Lal's case', (AIR 1921 All 1 FB) because it is doubtful whether an order setting aside an ex parte decree can be said to have been passed during the pendency of the suit and treated as an interlocutory order.

11. The next case is -- 'Kishan Lal Babu Lal v. Ram Chandra', AIR 1933 All 374. That is a single Judge decision and the question before the Court was whether the refusal of an application for amendment of a plaint is a case decided. It was held that it was. I must say that this decision appears to be in conflict with the decision in 'Buddhoo Lal's case', (AIR 1921 All 1 FB). This case further considered whether even though an appeal may lie to the High Court, the order could be interfered with in revision and the learned Judge observed as follows at page 376 :

'The view has been expressed more than once that, where the effect of allowing a revision, in a matter in which an appeal might also lie, will be a convenience to the parties and will save expense, the Court will be inclined to interpret the provisions of Section 115 liberally and to interfere with an order which has been passed without jurisdiction, or irregularly or illegally or with material irregularity in the exercise of its jurisdiction.'

I must say with due respect to the learned Judge that this interpretation, which he calls a liberal interpretation, cannot be taken as correct as the words of this section clearly are that the case decided must be one in which no appeal lies to the High Court. The learned Judge relied on an earlier judgment of the same court, namely, -- 'Lila v. Mahange', AIR 1931 All 632 (FB). But he omitted to notice that that was a case where the other remedy was by way of a suit and not by way of an appeal and in that connection it was observed that it could not be laid down as a general proposition that the High Court had no power of interference at all or should not interfere where there was another remedy by way of a suit open to the applicant. It is remarkable that the learned Judge while quoting from this case omitted the vital words 'by way of a suit.'

12. The next case to which reference may be made is -- 'Gupta & Co. v. Kripa Ram Brothers', AIR 1934 All 620 (FB) which is also a Full Bench case. In that case, the question arose whether a decision given by a Court during the trial of a suit as to the amount of the court-fee payable amounted to a case decided. It was

held that it did not.

The distinction between 'case' and 'suit' was laid down in this case by Sulaiman C. J. in these words at page 622 :

'It seems to me that it is not possible to lay down any complete and exhaustive definition of the word 'case'. Certainly the word 'case' is not an exact equivalent of the word 'suit'. Obviously it is something wider. At the same time, it may not be so wide as to include every order that is passed by a Court during the trial of a suit or proceeding pending before it. It cannot, in my opinion, be a case unless it is a proceeding which can be regarded as something separate and in a sense independent from the suit under hearing, and the termination of that proceedings should be somewhat different from mere orders passed in the ordinary trial of the suit itself. Ordinarily speaking, orders passed by the same Court from time to time during the trial of a suit would not be regarded as so many separate cases decided by the Court each of them being revisable under Section 115, C. P. C. But where the case is a proceeding which can be considered separate and distinct and is finally disposed of by an order which terminates it, it may well be considered to be a case decided although the suit has not in one sense been completely disposed of.'

This shows a slight departure from the decision in 'Buddhoo Lal's case', (AIR 1921 All 1 FB) in which it was held that where there is a suit pending, 'case' and 'suit' are one and the same. I must, however, say with all respect that the distinction that has been drawn by the learned Chief Justice is rather difficult to make out in practice in connection with interlocutory orders passed during the pendency of a suit.

13. The next case is -- 'Rural Ram Nath v. Kapil Man Misir', AIR 1935 All 353. This was a case of an amendment of a plaint. It was held that

'an order refusing to allow an amendment is a case decided and that any interlocutory order which terminates a proceeding started by an application should be considered to be the 'decision' of a 'case' within the meaning of Section 115, provided such proceeding is so far distinct from the suit itself that it can be

separated from it as a collateral matter.'

It was further observed that in doubtful cases, the Court should err on the side of entertaining a revision rather than refusing to do so. This case is obviously in the line of those cases which hold that Section 115 should be liberally interpreted and reliance was placed on 'Kishan Lal Babu Lal's case', (AIR 1933 All 374) mentioned above in which Kendall J. had given a liberal interpretation to Section 115.

14. This case, however, was specifically overruled by the same Court in -- 'Mt, Suraj Pali v. Ariya Pretinidhi Sabha', AIR 1936 All 686 (FB) where it was held that 'No revision lies from an order refusing to allow an amendment of a pleading.' It was, however, pointed out that

'where the amendment comes under some other order of the Court, e.g., the addition or substitution of parties or the striking off of a pleading may amount to a case decided, but an order passed purely under Order 6, Rule 17 does not.'

15. The next case is -- 'Ramzan Ali v. Mt. Satul Bibi', AIR 1948 All 244 (FB) which was also a Full Bench decision. The question in that case was whether the order granting an application for leave to sue as a pauper is a case decided and it was held that it was. It may, however, be remarked that this case cannot be said to be contradictory to 'Buddhoo Lal's case', (AIR 1921 All 1 FB), as it cannot be said that any suit is pending till the order granting the application for leave to sue in forma pauperis is made. It is only after the order is passed that the suit could be said to be pending though by virtue of certain provisions of the law, the suit is deemed to be pending from the date the petition to sue in forma pauperis was made.

Malik J. as he then was, tried to rest the distinction on the words 'in which no appeal liesthereto', for, at page 246, he observed as follows:

'It will be necessary for the Courts to consider in every case that comes up before them whether a particular order can be questioned under Section 105, Civil P, C., in the appeal from the decree or whether such orders finally determine certain matters which may materially affect the rights of the parties. In course of time, from the decisions, it may be possible to prepare some sort of an exhaustive list of

orders which are not revisable under Section 115, Civil P. C.'

The learned Judge, however, did not follow up this reasoning, for, he went on to say,

'Even such orders may, in the particular circumstance of a case, where the rights of the parties are materially affected, be considered to result in a 'case decided'.'

It seems to me that if this view is correct no meaning would be attached to the words 'in which no appeal lies thereto' which appear in Section 115. It may not be possible to lay down a complete list of interlocutory orders in which a revision lies and in which it does not. But I feel that it would not be impossible to indicate generally what is the limit within which an application for revision will lie, leaving it to the Courts to determine each particular case within the general limits thus laid down.

16. The last Allahabad case to which reference may be made is -- 'Hafiz Mohammad Ismail v. Shafaat Husain', AIR 1951 All 614. In that case, an application under Section 5, Limitation Act, was dismissed but no order was made dismissing the appeal. It was held that the order dismissing the application was a 'case decided', It seems to me that this is a peculiar case, for, generally speaking, if an appeal is filed beyond limitation accompanied by an application under Section 5, Limitation Act, and that application is dismissed, the appeal would also be dismissed, In such a case, a second appeal would lie to the High Court. It was only because of the peculiar fact that the Judge who dismissed the application under Section 5 had not passed an order dismissing the appeal that this case reached the High Court as a revision.

17. A consideration of these authorities leads me to one main conclusion, namely, that in these cases the two ingredients with which one is concerned, are not always kept distinct. These two ingredients are (1) whether the order is a 'case decided' and (2) whether an appeal lies from that order to the High Court. If I may say so with respect, if these two conditions had been kept separate and it was considered in each case whether both these conditions are satisfied, there would not be so much scope for conflicting decisions, barring of course, liberal

interpretations which I infer mean interpretations which are not supported by the language of this section.

It seems to me further that if these two matters are kept distinct, it may not be difficult to agree with those Courts which have given a wider interpretation to the words 'case decided' provided it is further remembered that it is not enough that there should have been a case decided before a revision can lie, but that there should be no appeal to the High Court from the case which was decided.

18. This brings me to the consideration of the Lahore cases. It would, in my opinion, be enough to consider the two main cases of the Lahore High Court in this connection. The first case is -- 'Firm Lal Chand Mangal Sain v. Firm Behari Lal Mehar Chand', AIR 1924 Lah 425 (FB). That was a five Judge Full Bench and the decision was unanimous. The view taken in this case was that

'the Legislature did not contemplate that an order made by a court before the final judgment from which no appeal is allowed, should be contested on an application for revision and that the trial of the suit should be delayed pending the disposal of that application.'

This case practically accepted the view taken by the Allahabad High Court in -- 'Buddhoo Lal's case', AIR 1921 All 1 (FB) and held that where a suit was pending, orders of an interlocutory nature could not be 'case decided'. It did not consider whether it was possible for an interlocutory order to be a 'case decided' without there being a right of revision from it on the ground that it was an order from which an appeal lies to the High Court.

19. The next case is -- 'Bibi Gurdevi v. Mohammad Baksh', AIR 1943 Lah 65 (F B). This was a Bench of seven Judges and was constituted to consider the decision in -- 'Lal Chand Mangal Sain's case', AIR 1924 Lah. 425 (FB). The main judgment was delivered by Bhide J. and he considered that

'the word 'case' is of very wide import and its general meaning in legal phraseology according to the Oxford Dictionary was: 'Any state of facts juridically considered'.'

I am of opinion that there should be no difficulty in adopting a wide definition of the word 'case' provided one remembers the other condition before revisions can be entertained by the High Court, namely, that no appeal should lie from the case decided to the High Court. The observations of Bhide J. in this connection are as follows at p. 77 :

'From the standpoint of language, pure and simple, there seems to be no good reason why one branch of a suit should be held to be a 'case' but not another and the word may include any interlocutory order. This does not, of course, mean that purely formal orders such as those relating to an adjournment or the summoning of a witness, etc., could be looked upon as a 'case'.'

It seems to me that looking to the meaning of the word 'case' alone, it should be interpreted to mean any state of facts juridically considered, the decision of which relates to some matter in controversy affecting the rights of the parties.

20. Bhide J. then went on to consider whether this wide interpretation would lead to inconvenience in practice. He took the view that

'the field of interlocutory orders subject to revision would be extremely narrow in view of the express and implied conditions necessary for the exercise of revisional jurisdiction. Theoretically the extraordinary jurisdiction is unlimited but in practice it is held to be subject to important and well-recognised limits.'

He then went on to say that

'no decision could be properly held to be a 'case' for the purposes of Section 115, Civil P. C. unless it relates to some substantial question in controversy between the parties. For, otherwise, there could be no likelihood of 'defeat of the law' and 'a grave wrong' being manifest.'

He further observed that

'the decision must be such that (a) the grave wrong must be either 'irremediable by the regular procedure' or (b) it must be 'manifest that by the ordinary or prescribed method an adequate remedy or the intended remedy cannot be had.'

He goes on to say that

'under (a) would come that class of orders, which cannot be attacked even in an appeal from the final decree under Section 105, Civil P. C., while under (b) will fall those which are liable to be attacked in an appeal from the final order or where there is other remedy provided in the shape of a suit.'

But he added that where in the special circumstances of the case, it appeared that the remedy, by appeal or otherwise proved too remote or cumbersome to be of any practical utility and it was manifest that 'a grave wrong' would thus be done to one or both the parties, the erroneous decision should be rectified forthwith under Section 115, Civil P. C.

21. These last observations, if I may say with respect, go against the specific provisions of Section 115, That section as I have already mentioned provides that there should be a 'case decided' and there should be no appeal to the High Court from that. But Bhide J. in making these observations is overlooking the provision relating to appeal to the High Court. If an appeal lies to the High Court, then I cannot see how a revision would lie simply because it is manifest that by the ordinary or prescribed method an adequate remedy or the intended remedy cannot be had. I would, therefore agree with the definition of the word 'case decided' given by Bhide J., but would like to add that full meaning must also be given to the words 'in which no appeal lies thereto' in coming to the conclusion whether a revision is competent.

If I may say so with respect, Bhide J. seems to disregard these words altogether in those cases in which he considers that though an appeal is provided, the prescribed method is not an adequate remedy. Where, of course, a suit is provided as the alternative remedy, it would be open to a party to come in revision from the case decided, for, there would be no appeal provided to the High Court from that order. But where an appeal is provided to the High Court, I feel that we should not amend the law in order to meet what may be called hard cases.

22. Dalip Singh J. also made certain observations in this connection. At page 80 he observes as follows:

'It is incorrect to say that every interlocutory order in a suit is a 'case decided' and in so far as it is that is subject to revision. It is incorrect to say that no interlocutory order is subject to revision, because it is clear that in the case of proceedings which may be called extraneous or ancillary to the suit, the proceedings regarded as such may be wholly terminated by the order and, therefore, must be subject to revision because they may never be capable of attack by way of appeal or otherwise again.'

He, however, did not follow this reasoning up to its logical conclusion and said later that it might be that in the course of time numerous decisions of the Court would evolve a formula which would fix the nature of points which could be regarded as 'cases decided' and the nature of points which could not be so regarded.

23. It is, in my opinion, unnecessary to consider the cases of those Courts which have given what is called a liberal interpretation of Section 115, so that every interlocutory order is liable to be revised. I am of opinion that the two conditions with which I have been dealing, namely that there should be a case decided and that no appeal should lie from that to the High Court should be kept distinct and the High Court should insist that both these conditions are fulfilled before entertaining a revision. If this distinction is kept in mind, there would be no difficulty in defining the word 'case' as any set of facts juridically considered the decision of which relates to some matter in controversy affecting the rights of the parties. This definition will exclude all formal orders from, being brought in revision to the High Court as these orders are not passed after consideration of the arguments advanced by the parties relating to some matter in controversy affecting the rights of the parties.

24. But this is only one of the conditions which has to be satisfied. The other condition which has also to be satisfied is that there should be no appeal from that order to the High Court and' I now turn to consider this aspect. It is obvious that where there is a direct appeal to the High Court from the order in question, no one would think of filing a revision. The difficulty arises in those cases in which there is no direct appeal to the High Court from the order in question. In such a case, the

matter which falls for consideration is whether it should be considered that there is an appeal provided to the High Court, if the order in question can be taken in appeal to the High Court directly or indirectly forthwith or after sometime. It is now well settled that the word 'appeal' in Section 115 is not restricted to a first appeal and where even a second appeal lies to the High Court, no revision lies. I may in this connection refer to -- 'Pattammal v. Krishnaswami Iyer', AIR 1923 Mad 794, -- 'Bani Madho Ram v. Mahadeo Pandey', AIR 1930 All 604 (2), -- 'Madhu Mian v. Rajaram Barai', AIR 1943 Cal 177, -- 'Mt. Barko v. Mt. Habiba Khanam', AIR 1947 Oudh 101. I may also refer to another Calcutta case -- 'Sashi Kanta Acharjya v. Nasirabad Loan Office Co. Ltd.', AIR 1936 Cal 786 in which a learned Single Judge took a slightly different view.

In that case, the Munsif passed a decree which was open to appeal before the lower appellate Court. The plaintiff, however, did not file an appeal before the lower appellate Court and filed a revision before the High Court straight off. The learned Judge held that the revision was entertainable because no second appeal lay to the High Court. It is enough to say that this case is not against the view that where a second appeal lies to the High Court, no revision would be entertainable. But it appears to me rather doubtful whether even in a case in which no second appeal lies to the High Court, a party can file a revision direct in the High Court without first appealing to the lower appellate Court.

25. Another indirect method in which the order can be brought to the High Court in appeal is by an appeal from the final decree or order in the proceeding in which it has been passed. Section 105, Civil P. C. permits any error, defect or irregularity in any order affecting the decision of the case to be set forth as a ground of objection in the memorandum of appeal. Where, therefore, it is open to a party to raise a ground of appeal under Section 105 from the final decree or order with respect to any order which has been passed during the pendency of the case, it should, in my opinion, be held that an appeal from that order lies to the High Court, even though the party may not be able to appeal directly to the High Court immediately after the order has been passed. Reference in this connection may be made to -- 'Anwar Khan v. Yakub Khan', AIR 1925 Nag 62, -- 'Senaji Kapurchand v. Pannaji Devichand', AIR 1932 Bom 81, -- 'Hridaynath Singh v. Loharsingh', 187

Ind Cas 838 (Pat). If, therefore, the words 'in which no appeal lies thereto' appearing in Section 115 are given their full meaning as mentioned by me above, there should be no difficulty in giving a wide meaning to the words 'case decided'. The two conditions must, however, be kept distinct. The confusion, if I may say so without meaning any disrespect, has arisen because these two matters have not been kept distinct.

26. In arriving at this conclusion I have strictly refrained from taking into consideration what are called grounds of expediency. In some of the cases that I have cited, these grounds have also been pressed into service in support of either a narrow or a liberal interpretation. For example, some High Courts have taken a narrow view to avoid a flood of revisions. Other High Courts have met this argument by saying that the flood could always be dammed on account of the 'important & well recognised limits' of revisional jurisdiction in actual practice.

27. Then again some High Courts have been impressed by the grave wrong that might be done to a party or by the likelihood of defeat of the law if a palpably erroneous decision (say on a question of limitation) is not immediately corrected, and have therefore given a liberal interpretation. Other High Courts, equally impressed by the inordinate delays that would take place if every interlocutory order could be brought in revision, have taken a narrow view. These considerations, however, are so equally balanced that I have preferred to rest my decision on the plain words, of the section giving every part its full meaning, adding nothing to it and subtracting nothing from it.

28. My conclusion, therefore, is that under what I have called the first part of Section 115, three conditions are necessary before the High Court can entertain a revision (1) that there should be a case decided, (2) that that case should have been decided by a Court subordinate to a High Court and (3) that no appeal should lie from that decision to the High Court. A case is said to be decided when the Court considers any state of facts juridically and gives a decision relating to a question in controversy between the parties affecting their rights. This is, however, not enough to make the revision entertainable. It has further to be shown that the decision was by a Court subordinate to the High Court and there should be no

difficulty about that. Lastly it has to be shown that no appeal lies from that order to the High Court. This condition will only be fulfilled if no appeal lies directly or indirectly to the High Court. If there is a direct appeal to the High Court, namely, a first appeal, the revision will not be competent. Even if there is indirect appeal, namely, a second appeal or the order in question can be taken in either first or second appeal to the High Court by taking a ground of appeal under Section 105, the High Court will not be competent to entertain a revision.

29. I now come to the cases of our own Court. The first is -- 'Shankarlal v. Deenanath', 1950 R L W 249. That is a Single Judge decision on a question of wrong allocation of burden of proof. A preliminary objection was raised that it was not a case decided and no revision lay. This preliminary objection was overruled and it was held that the High Court could interfere in revision. But in the view that I have taken, the decision on a question of burden of proof, provided the Court came to some decision after hearing the parties, would be a case decided. But the other aspect of the question was not considered in this case, namely, whether an appeal lies to the High Court from that order. The order in question was passed by the District Judge of Bikaner in a suit pending in that Court and the grievance was that the Court had framed the issues wrongly and placed the burden of proof on the wrong party. The party which was aggrieved could agitate the matter in the first appeal from the final decree. In that view, this decision inasmuch as it overlooked the question whether an appeal lay to the High Court was not correct.

30. The next case is--'Gambhirmal v. Gyanchand', AIR 1950 Raj 20 to which my brother Bapna was a party. That was a case of amendment of a plaint under Order VI, Rule 17. It was held that it was a case decided and the High Court could interfere. It is enough to point out that in that case also the attention was concentrated on the words 'case decided'. In the view that I have taken of the words 'case decided' an order allowing amendment which was passed after controversy between the parties would be a case decided. It is enough for present purposes to say that in the extraordinary circumstances of that case, where one plaint was practically substituted for another, it may not be possible to raise the point as a ground of appeal under Section 105.

31. The next case is -- 'Dr. Niranjan Nath v. Sardar Mal', AIR 1950 Raj 31. In that case also it was held that the word 'case' means decision on any substantial question in controversy between the parties affecting their rights, even though such order is passed in the course of the trial of the suit. This is also the definition which I have adopted. That was a case where an assignee prayed that he may be brought on the record in place of the assignor. That request was refused and the assignee was not brought on record. He thereupon came in revision. It may be mentioned that as the assignee was not brought on the record, he could not take the matter in appeal from the final decree and would be at the mercy of the assignor who might or might not file an appeal. This case, therefore, in my opinion, fulfils the requirement that no appeal lay directly or indirectly, so far as the assignee was concerned, from the order in dispute to the High Court and, therefore, this condition was also satisfied.

32. The next case is -- 'Harji v. Hastisingh', 1951 Raj LW 1, where a learned Single Judge held that wrong allocation of burden of proof would afford a good ground for interference by the High Court after the final decision of the suit. This view was different from the view of Gupta J. in -- 'Shankarlal v. Deenanath', 1950 Raj L W 249. But I must point out, with all respect, that when the learned Judge said that the High Court could interfere in revision after the final decision, he was not correct. The suit was before the Munsif and after the final decision, there would be an appeal to the District Judge and a second appeal to the High Court and on the view that I have taken, revision would never be competent in the High Court.

33. Then I come to -- 'Bharat Singh v. Raj Singh', 1951 Raj L W 507. This is a Division Bench case, also on the question of wrong allocation of burden of proof. The two cases mentioned above, namely, -- 'Shankarlal's case', 1950 Raj L W 249 and -- 'Harji's case', 1951 Raj L W 1 were considered in this. The learned Judges agreed with the view of Gupta J. and held that revision lay. It is enough to point out that in this case also the question whether an appeal lay from that order to the High Court directly or indirectly was not considered. I understand that a similar case relating to wrong allocation of burden of proof has been referred to a Full Bench and I need not, therefore, say anything further on the point. Except for this case, which may be held by implication to have taken a different view, there is no

other case of this Court which takes a view different from mine.

34. The last question, therefore, to which I address myself is whether the present revision complies with what I have said above. It is undoubtedly from a Court subordinate to the High Court. The facts have also been considered juridically in this case and the decision on points in controversy between the parties affecting their rights has been given and it is therefore, a case decided. But an appeal will lie to the High Court from this decision after the final decree. The decision is on questions of limitation and court-fee and it will be open to the present applicants to raise the points relating to limitation and court-fee when they come in appeal to the High Court from the decree of the District Judge, if it goes against them on other points also. It cannot, therefore, be said that this is a case in which no appeal lies to the High Court. In this view of the matter, I am of opinion that though a case has been decided, the revision is not competent as an appeal lies indirectly from the order to the High Court.

35. As this disposes of the entire revision, it is not necessary to reply to the second question that was referred to this Bench. It is enough to say that that question relating to limitation would be disposed of when the matter comes up in appeal to this Court from the final decree of the District Judge.

**Bapna, J.**

36. I agree with my lord the Chief Justice in the order proposed in this case.

37. On objection by the defendant in a suit to enforce the award, issues were framed as to whether the court-fee paid by the plaintiff was sufficient, and whether the suit was barred by limitation. The Court held that the court-fee was sufficient and the suit was within time. The defendant has come up in revision and the following questions were referred to Division Bench by the learned Judge who heard this petition:

'(i) Whether or not the order sought to be revised, decided a case, and whether or not a revision petition is competent against it; and

(ii) Whether the application of the non-petitioner for filing of the award was an application relating to matters in respect of which there was no case pending before the Court, and Article 32, Mewar Limitation Act was applicable.'

By a subsequent order of my Lord the Chief Justice, the whole case was to be dealt with by a Division Bench.

38. On behalf of the applicant, reliance was placed on -- 'Bibi Gurdevi v. Mohammad Baksh', AIR 1943 Lah 65 (FB) for the contention that the words 'case decided' should be interpreted in a wider sense and should include the decision on any substantial question in controversy between the parties affecting their rights even though such order is passed in course of the trial of the suit, and in that view the decision of the lower Court on both the points amounted to 'case decided' and a revision was competent under Section 115, Civil P. C. Learned counsel also cited -- 'Gambhirmal v. Gyanchand', AIR 1950 Raj 20, -- 'Dr. Niranjana Nath v. Sardarmal', AIR 1950 Raj 31, -- 'Shankarlal v. Deena Nath', 1950 Raj L W 249, and -- 'Bharat Singh v. Raj Singh', 1951 Raj L W 507 in which the view taken in -- 'Bibi Gur-devi's case' was approved.

With respect to the extreme view on the other side represented by -- 'Buddhoolal v. Mewa Ram', AIR 1921 All 1 (FB), that the word 'case' in Section 115, C.P.C., does not include an issue or part of a case and that it means the suit itself where an application for revision is made in a suit and as such an interlocutory order which did not decide the suit itself is not a case decided and cannot be interfered with under Section 115 of the Code, learned counsel contended that this extreme view has been much toned down by observations in subsequent decisions of the same High Court vide -- 'Messrs. Gupta & Co. v. Kriparam Brothers', AIR 1934 All 620 (FB), and -- 'Ramzan Ali v. Satul Bibi', AIR 1948 All 244 (FB). It was urged that the majority of the High Courts in India have taken the same view of law as taken in -- 'Bibi Gurdevi's case'.

39. On behalf of the opposite party, it was urged that although the extreme Allahabad view represented by -- 'Buddhoolal v. Mewa Ram', AIR 1921 All 1 (FB) does not hold the field but the observations in -- 'Bibi Gurdevi's case', (AIR 1943 Lah 65 (FB) ) do not warrant an interference in every interlocutory order and in any

case there is a preponderance of authorities against interference in decisions of the lower Courts on certain issues only which is the case in point.

40. In my opinion, the matter of the interpretation of the words 'case decided' has been dealt with exhaustively in -- 'Bibi Gurdevi's case', AIR 1943 Lah 65 (FB) and with great respect I agree with the interpretation made by Bhide J. that 'the word 'case' is wide enough to include decision on any matter in controversy affecting the rights of the parties to a suit'. The narrow interpretation found in -- 'Buddhoolal v. Mewa Ram', AIR 1921 All 1 (FB) has been departed from even by the Allahabad High Court as would appear from the following observations of Malik J. in the latest Full Bench of that Court in -- 'Ramzan Ali v. Mst. Satul Bibi', AIR 1948 All 244 (FB):

'Para 16. In the case of a suit it was held in some cases that it was not decided till a decree was passed, and, therefore, any order of whatever description passed in the course of the trial of a suit could not be a 'case decided'; it was merely an interlocutory order. The Courts have, in a large number of cases, held that if an order is an 'interlocutory order' it cannot be a 'case decided'. By using the expression 'interlocutory order' in contradistinction to a 'case decided', 'the Courts seem to have created difficulties for themselves. The expression 'interlocutory order' is also not defined in any statute. Ordinarily, it would mean any order that is passed during the pendency of a suit. When I come to discuss the rulings, it would appear that the distinction is a very old one, and that wherever the Courts wanted to hold that it was not a case decided they, more often than not, said that it was not a 'case decided', because it was an 'interlocutory order'.

(17) This was, however, not found very satisfactory and attempts were made to draw the further distinction that interlocutory orders relating to matters which could be held to be distinct and separable from the main suit were 'cases decided'. This led to the consideration in each case of the question whether the particular proceedings were so distinct and separable from the main suit that they could be held to be a separate 'case'.

(18) It is difficult to frame a general formula or to classify the proceedings into two separate groups and to say that certain proceedings are so distinct and separable

that orders disposing of them are 'cases decided' and the others are so incidental or ancillary to the conduct of the suit that they are not 'cases decided'. Generally, miscellaneous orders, such as orders granting an adjournment, fixing a date, giving time to a party, summoning witnesses, admitting or rejecting a document, etc., may not be orders deciding a case as no question has been determined affecting the rights of the parties.

(19) It will be necessary for the Courts to consider in every case that comes up before them whether a particular order can be questioned under Section 105, C. P. C., in the appeal from the decree or whether such orders finally determine certain matters which may materially affect the rights of the parties. In course of time, from the decisions, it may be possible to prepare some sort of an exhaustive list of orders which are not revisable under Section 115, C. P. C.

(20) But even such orders may, in the particular circumstance of a case, where the rights of the parties are materially affected, be considered to result in a 'case decided'. It is, therefore, to my mind, futile to try to give a definition of the words 'case decided' which would apply to all facts and circumstances, or try to limit the same to the question whether the matter is distinct and separable from the main suit or has intimate connections therewith.

(21) The questions that the Courts should consider when deciding a revision under Section 115, C. P. C., are whether the order complained against decides a point in controversy which substantially affects the rights of the parties, whether that order has been passed without jurisdiction or in the irregular exercise thereof, and whether if the High Court does not exercise its revisional jurisdiction substantial injustice would be done to a party.'

41. It is unnecessary to consider the other cases of the Allahabad High Court. The recent decisions of the other High Courts also favour the broad interpretation made by the Lahore High Court in -- 'Bibi Gurdevi's case', AIR 1943 Lah 65. Reference may be made to --Municipal Borough of Ahmedabad v. Aryodaya Ginning and .', AIR 1941 Bom 361, -- 'Surpat Singh v. Ratan Chand', AIR 1940 Cal 92, -- 'Lakshimidevamma v. Nag-ayya', A I R 1949 Mad 369, -- 'Liladhar v. Firm Radhakishen Ramsahaya', AIR 1946 Nag 5, -- 'Murarji Surji v. Jayant Trading

Corporation Limited, Bombay', AIR 1949 Kutch 5, and -- 'Chandra Kishore v. Babulal Agarwala', AIR 1949 Orissa 77.

42. The first part of the first question will, therefore, be answered that the order holding that the court-fee paid was sufficient, as also the order holding that the suit was not barred by limitation, are each of them a 'case decided'. The second part of the question as to whether a revision petition is competent would depend upon whether certain other conditions laid down in Section 115, Civil P. C. have also been satisfied. Section 115 runs thus:

'The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto and if such Subordinate Court appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.'

The first portion of the section empowers the High Court to call for the record of any case which has been decided by any subordinate Court and in which no appeal lies thereto. The second portion lays down the conditions in which interference can be made in the discretion of the High Court. When we say 'whether revision is entertainable' we have to consider whether the conditions for calling the record have been satisfied. Of course, the Court will refuse to send for the record in a case in which it is clear that the conditions necessary for an interference do not exist.

43. Now one of the two conditions for entertaining a revision is that the decision should be in a case in which no appeal lies to the High Court. If an appeal lies to the High Court directly from the order complained of, obviously the matter cannot be taken up in revision. There is also a preponderance of authorities that if the

order is open to a second appeal to a High Court, it cannot be revised under the section. These have been referred to by my Lord the Chief Justice and need not be cited here again.

44. The principle appears to be that if the matter can be agitated before the High Court in first or second appeal, the litigant's duty is to have recourse to that remedy and he is debarred from agitating the question on the revisional side of the High Court. The above two modes of agitating the question before the High Court are provided by Sections 96 and 100, Civil P. C. in which the decision of the lower Court amounts to a decree. Where the decision does not amount to a decree, the provision for agitating the same question before the High Court is contained in Section 105, Civil P. C. which is as follows:

'Section 105-

'(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 a 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 made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.'

The order during the progress of a suit or proceeding which may affect the decision of the case can thus be challenged before the High Court in cases in which the first or the second appeal lies to the High Court against a decree of the court which passed the order. The words 'affecting the decision of the case' in Section 105, C. P. C. have been interpreted by all the High Courts as meaning 'affecting the decision of the case on the merits'. That this should only be so becomes apparent by reference to Section 99 of the Code which says that-

'No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder 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.'

Therefore, there are certain orders which can be agitated before the High Court in the first or the second appeal which fulfill the conditions laid down in Section 105 of the Code. There would be other orders which cannot be agitated, that is, cannot be taken as grounds of appeal in the first or the second appeal to the High Court. In the case of orders, therefore, which fulfill the conditions laid down in Section 105, Civil P. C., and which can be challenged in the first or the second appeal to the High Court, it would be quite correct to say that an appeal lies therefrom to the High Court. The question then arises as to whether it was intended by the Legislature that such orders could also form the subject matter of a separate revision to the High Court.

In my opinion, it could not have been so intended. According to the history of Section 115, the Code of 1859 did not provide any provision, for the exercise of the revisional powers by the High Court. When the Charter Act of 1861 was passed establishing several High Courts in the Presidencies, a power of superintendence was conferred on them over subordinate courts subject to their appellate jurisdiction by Section 15 of that Act. But before the actual constitution of the High Court, the Sudder Courts were empowered by Section 35 of the Act (No. 23 of 1861) to call for the records of any case decided 'in appeal' by the subordinate Court & in which no further appeal lay when the subordinate Court appeared to have exercised a jurisdiction not vested in it. Section 115 was thereafter enacted for the exercise of revisional powers by the High Court under certain circumstances mentioned in that section.

45. In my opinion, therefore, all such orders passed by the lower Court amounting to 'cases decided' in the course of a suit or proceeding, which can be challenged in the High Court by being made the subject of a ground of first or second appeal as the case may be, cannot be the subject of a revision. In dealing with the question, in what 'decided cases' a revision would be competent, Bhide J.

observed in --'Bibi Gurdevi's case', A I R 1943 Lah 65 (FB) at page 78,

'It seems to me that no decision could be properly held to be a 'case' for the purposes of Section 115, C. P. C., unless it relates to some substantial question in controversy between the parties. Secondly, the decision must be such that (a) the grave wrong must be either irremediable by the regular procedure, or (b) it must be manifest that by the ordinary or prescribed method an adequate remedy or the intended remedy cannot be had. Under (a) would come that class of orders which cannot be attacked even in an appeal from the final decree under Section 105, C. P. C., while under (b) will fall those which are liable to be so attacked in an appeal from the final order, or where there is another remedy provided in the shape of a suit, but where in the special circumstances of the case it appears that the remedy by appeal or otherwise will prove too remote or cumbersome to be of any practical utility.'

Dalip Singh J. observed at page 80 of the same case:

'I, therefore, deduce the following two propositions. It is incorrect to say that every interlocutory order in a suit is a 'case decided' and in so far as it is that is subject to revision. It is incorrect to say that no interlocutory order is subject to revision, because it is clear that in the case of proceedings which may be called extraneous or ancillary to the suit, the proceedings regarded as such may be wholly terminated by the order and, therefore, must be subject to revision because they may never be capable of attack by way of appeal or otherwise again.'

The other five Judges agreed with the reasoning of either Bhide J. or Dalip Singh J., both of whom had given concurring judgments though the reasoning was somewhat different. It would be clear from the observations cited that according to Dalip Singh J., only those interlocutory orders were revisable which were never capable of attack by way of appeal or otherwise. In other words, if such interlocutory orders could be attacked under Section 105, Civil P. C. a revision was not competent. Bhide J. also laid down that restriction but nevertheless allowed interference under special circumstances.

46. The observations of Malik J. in -- 'Ramzan AH v. Mst. Satul Bibi', AIR 1948 All 244 (FB) have already been cited above, and as will be seen in para 19 of that judgment, he was of the view that it was necessary to consider in every case 'whether a particular order can be questioned under Section 105, C. P. C.' and that in course of time, it may be possible to prepare some sort of an exhaustive list of orders which are not revisable under Section 115, C. P. C. He obviously meant that orders which could be the subject of appeal under Section 105, C. P. C., were not revisable. The next two paragraphs are, however, not quite consistent with para 19, and while summarizing the conditions laid down in Section 115, C.P.C, under which a revision was maintainable, he has omitted to consider the effect of words 'in which no appeal lies thereto' appearing in that section. The same view has been taken in some cases to which a reference may be made.

47. In -- 'Anwar Khan v. Yakub Khan', AIR 3925 Nag 62 Prideaux A. J. C., gave one of the grounds for rejecting the revision that it is not usual to interfere in revision in the case of interlocutory orders because though there may be no immediate appeal against such an order a remedy is supplied by Section 105, C.P.C., which provides that such orders may be made a ground of objection in the appeal against the final decree.

48. In -- 'Senaji Kapurchand v. Pannaji Devichand', AIR 1932 Bom 81 a plea was taken by the defendant that the plaintiff's suit was barred by res judicata. The Subordinate Judge heard arguments on this preliminary issue and held that the suit was not barred by res judicata and ordered that the suit should proceed on merits. On revision being preferred it was observed after review of cases,

'The overwhelming balance of authority is in support of the view that a finding on an interlocutory matter followed by an order is not a case decided within the meaning of Section 115, C.P.C., and that the High Court will not interfere in a case where the party aggrieved has another remedy open to him by way of appeal. In the present case, supposing the ultimate decision of the case to be in favour of the plaintiff, it would be open to the defendant to appeal to this Court against the decree of the lower Court.....It may be pointed out that it is extremely inconvenient if the High Court should interfere in revision with a finding on an issue of res

judicata which will be equivalent to final disposal of the suit. In these circumstances, I have no hesitation in holding that the present finding on the issue of res judicata or rather the interlocutory order that the case should proceed is not one against which revision under Section 115, C. P. C., is open to the party aggrieved'.

49. In -- 'Pyu Maung v. Ma Mi Gyi', AIR 1933 Rang 263 it was observed that in a revisional application against a preliminary decision of one issue of res judicata, the High Court is not concerned with the question as to the correctness of the decision in law because even if the decision be erroneous in law it can be taken up as a ground of appeal from the decree which may be finally passed in the suit.

50. In -- 'The National Security Assurance Co. Ltd. v. Balmokand'. 1951 All L J 240 the Civil Judge decided two preliminary issues as to jurisdiction and maintainability of the suit in favour of the plaintiff. A revision against that decision was held to be incompetent. This was of course held following the earlier decisions of the Allahabad High Court, but the principle behind the decision was that the matter could be taken up in appeal from the decree in the suit if it would be decided against the defendant.

51. In -- 'Ram Lal Sahu v. Mt. Bibi Sahra', AIR, 1935 Pat 90, Fazl Ali J. declined to interfere in an order of the Munsif on the basis of the long established practice of the Court and it was observed,

'If the ultimate decision of the Munsif goes against the petitioner he will in due course be entitled to prefer an appeal and he may ask the appellate Court to deal with the issue as to jurisdiction also'.

52. In -- 'Hridaynath Singh v. Lohar Singh', 187 Ind Cas 838 (Pat) it was contended on behalf of the opposite party that the case was not fit for revision because the petitioner had raised grounds in the petition which he could have very well raised in the appeal from final decree after such a decree had been passed. Their Lordships of the Patna High Court accepted the contention as correct and observed that it was the practice of that Court to refrain from dealing with a matter in revision when a definite remedy was provided to the parties in the form of an

appeal.

53. In cases where interference has been made, it has been sought to be justified on the ground of expediency and in the hope that it would save much time and expense of the litigants. The reasons of expediency are, however, not always one way and it has also been seen that a suit which normally would have terminated quickly had to remain pending as due to the particular system prevailing in the High Court, a revision once admitted remains undecided for a very long time and in many cases unduly delays the disposal of the suit.

54. Orders in proceedings before a suit is commenced or after a suit has ended, and proceedings for which the Legislature has provided an independent remedy or a different procedure in respect of which the High Courts are generally agreed that a revision is competent if the defect of jurisdiction mentioned in Clause (a) or (b) or (c) of Section 115 exists, are also obviously those which cannot be challenged in first or second appeal to the High Court under Section 105, Civil P. C., and the above interpretation does not come in conflict with such cases.

55. It remains to consider the cases decided by our own High Court since learned counsel urged, they would be in conflict with the view now taken, and if so, the matter required to be referred to a Full Bench. In the case of --'Gambhirmal v. Gyan Chand', AIR 1950 Raj 20 which was decided by me sitting singly, the amendment of the plaint was allowed by the lower Court which purported to make out an entirely new case by substituting one cause of action for another. If the case would have been allowed to proceed on the amended plaint and decision adverse to the defendant had been given, he could not have challenged it under Section 105 of the Code as it could not be said that the order of amendment affected the decision of the case as ultimately placed before the lower Court on the merits. In that case, the other conditions laid down in Section 115, Civil P. C. were also fulfilled and the order of the lower Court was interfered with in revision.

In the case of -- 'Dr. Niranjana Nath v. Sardarmal', AIR 1950 Raj 31 to which I was a party, the lower Court had refused to bring on record the assignee of the party and that order could not have been challenged in the appeal to the High Court against the decree, if passed, because the assignee had not been even brought on the

record. In the other 2 cases --'Shankarlal v. Deenanath', 1950 Raj L W 249 and -- 'Thakur Bharat Singh v. Thakur Raj Singh', 1951 Raj L W 507, the revisions were allowed on the ground that the lower Court had placed the burden of proof wrongly on the petitioner. Another Judge of this Court sitting singly, however, took an opposite view in --'Harji v. Hasti Singh', 1951 Raj L W 1. The order wrongly placing the burden of proof, if not acquiesced in, could be taken as a ground of appeal when such was preferred to the High Court against the decree, whether in first or second appeal as the case may be, and in the view that I take, no revision was entertainable.

The decision of the Division Bench on the question whether revision was entertainable on the ground that a wrong burden of proof had been placed by the trial Court on a particular party will, however, be confined to that question alone. As the question before us is, however, on a different point, it is not necessary to refer the matter to a Full Bench.

56. On the principles, above referred to, both the questions decided by the lower Court could be agitated in the first or the second appeal which ultimately may be filed before the High Court, and, therefore, this revision is not maintainable.

57. Learned counsel for the petitioners at one stage urged that the observations of their Lordships of the Privy Council in -- 'Joychandlal Babu v. Kamalaksha Chaudhury', AIR 1949 P C 239 at page 242 indicated that the High Court had power to interfere in such cases since their Lordships held that the refusal to interfere by the Allahabad High Court on the point of limitation in -- 'Baburam v. Munnalal', AIR 1927 All 358 and on the point of res judicata by the Bombay High Court in--'Hari Bhikaji v. Naro Vishvanath', 9 Bom 432, was not correct. On reference to these cases it was discovered that in none of them was an appeal entertainable. The Allahabad case related to a petition for setting aside the ex parte decree and the Bombay case was a decision by Small Causes Court.

58. I may here also refer to -- 'Manindra Kumar Bose v. Santi Rani', AIR 1951 Cal 518 where an opinion seems to have been expressed that the High Court could interfere in an erroneous decision on the question of limitation in a suit pending in the lower Court, and reliance was placed on observations of their Lordships of the

Privy Council in -- 'Joychandlal v. Kamalaksha', AIR 1949 PC 239. As pointed above, the observations of their Lordships of the Privy Council were with reference to those cases in none of which an appeal was entertainable.

59. My answer to the second part of the first question, therefore, is that a revision is not competent against the decision of the lower Court on the preliminary issue holding that the court-fee was sufficient, and for the same reasons against the decision that the suit was not barred by limitation.

60. I, therefore, agree with my Lord the Chief Justice that this revision is not maintainable and it should be dismissed with costs.

61. BY THE COURT: We therefore dismiss this revision with costs to the opposite party.

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