

Manak Chand and ors. Vs. Rameshwar and ors.

Manak Chand and ors. Vs. Rameshwar and ors.

SooperKanoon Citation : sooperkanoon.com/765809

Court : Rajasthan

Decided On : Apr-17-2003

Reported in : RLW2004(2)Raj791

Judge : S.K. Keshote, J.

Acts : Code of Civil Procedure (CPC) Amendment Act, 1999 - Sections 115 and 115(1)

Appeal No. : S.B. Civil Revision No. 1068 of 1999

Appellant : Manak Chand and ors.

Respondent : Rameshwar and ors.

Advocate for Def. : Alok Garg, Adv. Non-Petitioners No. 1 and 5

Advocate for Pet/Ap. : K.K. Sharma, Adv.

Disposition : Revision dismissed

Judgement :

Keshote, J.

1. The matter is placed on the board for orders as the notices for plaintiff non-petitioners No. 4/2 are received unserved.

2. Shri Alok Garg, the learned counsel for the plaintiff non- petitioners No. 1 and 5 raised a preliminary objection that this revision petition is not maintained in view of the amended provisions of Section 115 of the C.P.C. 1908.

3. Shri K.K. Sharma, the learned counsel for the defendant petitioner, on the other hand, contended that this revision petition is maintainable. In his submission amended provisions of C.P.C. are not applicable to the matters pending on the date on which the same are brought in force. It is urged that this revision petition has been filed much before the amended provisions of the C.P.C. were brought in force.

4. It has next been contended that under the amended Section 115 of the C.P.C. the revision petition is maintainable as in case the order of the learned trial court challenged therein is varied or reversed it will result in final disposal of the proceedings i.e. the application filed by the petitioner under Section 90 of the Indian Evidence Act.

5. As the preliminary objection raised by the learned counsel for the non-petitioners No. 1 and 5 is a pure question of law and to answer the same it is not necessary to go in detail on the factual aspect of the matter, thus the brief narration thereof would be suffice.

6. Prior to the amendment brought into Section 115 of the C.P.C. by Code of Civil Procedure (Amendment) Act 1976 (Act No. 104 of 76) (hereinafter shall be referred to as 'the Act, 1976'), this Section read as under,

'115. Revision.-(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court.

(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.'

7. Vide Section 43 of the Code of Civil Procedure (Amendment) Act, 1976, Section 115 is renumbered as Sub-section (1) and proviso to Sub-section (1), Sub-section (2) and explanation have been added which read as under,

'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

(a) 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, 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.

(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.

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.'

8. Clause (b) of proviso to Sub-section (1) of Section 115 has been deleted by the Code of Civil Procedure (Amendment) Act, 1999 (Act No. 46 of 1999) (hereinafter shall be referred to as 'the Act, 1999') with effect from 1.7.2002 vide its Section 12. Subsection (3) has been inserted. These two amendments brought into the Section 115 of the C.P.C. by deletion and insertion as aforesaid, read as under,

'Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(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.'

9. Section 32 of the Code of Civil Procedure (Amendment) Act of 1999 is the provision of Repeal and Saving. Sub-section (1) of Section 32 of the Act aforesaid provides that any amendment made or any provision inserted in the principal Act by State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provisions is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

10. Sub-section (2) of Section 32 of the Act aforesaid is savings clause, which provides that notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and 'without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897,

(i) the provisions of Section 115 of the principal Act, as amended by Section 12 of this Act, shall not apply to or affect any proceeding for revision which had been finally disposed of.

11. Section 97 of the Code of Civil Procedure (Amendment) Act, 1976 is repeal and saving Section and Sub-section (2) thereof reads that - Notwithstanding that the provisions of this Act come into force or the repeal under Sub-section (1) has taken affect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897, the amendment of Section 115 of the Principal Act by Section 43 of this Act shall not apply to or effect any proceedings for revision which had been admitted after preliminary hearing before the commencement of the said Section 43 and every such proceedings for revision shall be disposed of as if the said Section 43 had not come into force.

12. The revision petition was placed for preliminary hearing in court on 19th of July, 1999; on this date the court has been pleased to issue notices to the non-petitioners to show cause as to why this revision petition should not be admitted and disposed of Thereafter the proceedings in the revision petition were going on for the services of the notices thereof on the respondents. The revision petition undisputedly is not admitted till date.

13. Clause (i) of Sub-section (2) of Section 32 of the Act, 1999 has saved the proceedings or revision which had been finally disposed of before coming into

force of the Act aforesaid. The mandate of the Sub-clause (i) of Sub-section 2 of Section 32 of the Act, 1999 is that the provisions of Section 115 of the Principal Act as amended by Section 12 of the Act aforesaid shall not apply or affect the revision or proceedings which had already been disposed of. Section 97 of the Act, 1976 as it transpires from plain reading thereof that the amendment of Section 115 of the Principal Act by the aforesaid Act shall not apply or affect any proceedings and revision which had been admitted after preliminary hearing before commencement of the Act, 1976. It has further been provided that every such proceeding or revision shall be disposed of as if Section 97 of the Act, 1976 had not come into force. Thus the revision petitions which had been admitted after preliminary hearing before commencement of the Act, 1976 were saved and are to be dealt with and decided as if the amendment under Section 115 of the C.P.C. was not brought into force. Intent of the Parliament is clearly, distinct and different in the Act, 1976 and Act, 1999. In the Act, 1976 pending revision petition admitted after preliminary hearing before the Act aforesaid brought into force were saved but not in the Act, 1999. Thus, the first contention raised by the learned counsel for the petitioner that these proceedings of the revision petition are not affected by the Amendment Act of 1999 is devoid of any force and substance.

14. The learned counsel for the defendant petitioners is in agreement that vary or reversal of the order of the learned trial court impugned in this revision petition will not result in final disposal of the suit.

15. The plaintiff non-petitioners filed a suit for permanent injunction against the defendant petitioners alleging that there was a 'bagichee' situated at the Ghat Gate, Jaipur which is known as 'bagichee khowalan'. It is alleged in the plaint that the 'bagichee' had been constructed with the object and purpose to provide facility of sitting and bathing to the persons who use to attend the funerals. A 'tibara' is also alleged to have been constructed thereon and as per the case of the plaintiff non-petitioners it has been taken as the part of the funeral ground. The plaintiff non-petitioners having apprehension that the defendant petitioners wanted to encroach upon the land of the 'bagichee' the suit out of which this revision arises had been filed. The defendant petitioners are contesting the suit. They filed detailed written statements. Therein the claim made by the plaintiff non-petitioner

has been disputed,

16. In the suit an application has also been filed for grant of temporary injunction. On 10th of September, 1991 that application came to be finally decided by this court in Revision Petition No. 449/1991. This Court directed both the parties that if any of them wants to make any construction for charitable purpose would seek the permission of the court. During the course of hearing of the suit, it is alleged that the plaintiff non-petitioners filed another application for temporary injunction with a view to some how get over the possession of the 'bagichee'. They wanted to bore a well and provide water tank so as to available water to the persons visiting cremation ground. That application was alleged to have been dismissed on 8th of May, 1995. Appeal was taken against that order was also stated to have been rejected on 7th of October, 1995. The matter was carried in revision by the plaintiff non-petitioners and this Court by an interim order has permitted them to bore a well. It is stated that ultimately that revision petition came to be dismissed on 25th of January, 1997.

17. The defendant petitioners also stated to have filed two revision petitions. The first one was against the order of the learned trial court rejecting therein their application filed under Order 14 Rule 5 of the C.P.C. This revision petition stated to have been allowed on 1st of October, 1996. The second revision petition was filed against the order of the learned trial court declining to grant the permission to the defendant petitioners to amend the written statement as proposed therein. That was stated to have been allowed on 1st of October, 1996 also.

18. The plaintiff non-petitioners filed an application in the trial court and prayed therein for drawing presumption under Section 90 of the Evidence Act in respect of documents, the details thereof have been given therein. Their case was that the documents, are more than 30 years old and relate to the 'bagichee'. The learned trial court allowed this application under its order dated 6th of July, 1999. The defendant petitioners have challenged the same in this revision petition. There cannot be two views that vary or reversal of the impugned order will not result in disposal of the suit finally. The vary or reversal thereof at the most result in that the presumption under Section 90 of the Evidence Act shall not be available in favour

of the plaintiff non-petitioners in respect of the documents mentioned in the application.

19. Contention of Shri Sharma, the learned counsel for the petitioners, is that vary or reversal of the impugned order will result in final disposal of the proceedings drawn on this application. In his submission the proceedings is to be given wide meaning and the order passed on an application may be interlocutory in character, it is in a proceedings and vary or reversal thereof will result in final disposal thereof drawn on the application filed by the plaintiff non-petitioners for drawing the presumption under Section 90 of the Evidence Act for the documents mentioned therein.

20. The Law Commission of India had at one point of time recommended deletion of Section 115 from the Code. The Law Commission was of the opinion that deletion of Section 115 from the Code will not result in causing any prejudice to the litigants as efficacious remedy in the appropriate cases against the interlocutory order passed by the courts subordinate is available under Article 227 of the Constitution of India. There were deliberations and discussions on these recommendations of Law Commission of India and the Joint Committee of Parliament was not in favour of deletion of Section 115 of the Code. The Joint Committee of the Parliament felt that in addition to the restrictions contained in Section 115, an overall restriction on the scope of the application for revision against the interlocutory orders should be imposed. The Joint Committee of Parliament having regard to the recommendations made by the Law Commission in its 14th and 27th reports recommended for retention of Section 115 of the Code subject to the modification as incorporated therein under the Civil Procedure Code (Amendment) Act, 1976. This amended portion of Section 115 of the Code by the Act aforesaid has already been reproduced in the preceding part of this judgment.

21. By the Act, 1976 the revisional power of the Court under the old Section 115 of the Code has been narrowed down. By the Act, 1976 in Section 115 of the Code the legislature put certain positive restrictions on the power of the High Court to deal with the revision petitions under this Section. As per Clause (a) of proviso to Sub-section (1) of Section 115 of the Code as amended by the Act, 1976 even a

case may fall under any of the Clauses (a), (b) & (c) of that Sub-section still the power of the revision was not available to the High Court unless variance or reversal of the impugned order of the court below would have resulted in final disposal of the suit or other proceedings.

22. Clause (b) to proviso to Sub-section (1) of Section 115 of the Code as amended by the Act, 1976 appears to have been inserted by the Legislature keeping in view that under this Section suo motu power of revision of the order of the courts subordinate lies within the High Court. But, suo motu revisional power of High Court under Section 115 of the Code has also been circumscribed by the Act, 1976. This suo motu power of revision under Section 115 of the Code as amended vide Act No. 1976 is available to the High Court in the case where it is satisfied that the order challenged in the revision petition of the court subordinate is allowed to stand would occasion a failure of Justice or cause irreparable injury to the party against whom it was made. Ultimate consideration for the High Court is to do substantial justice to the litigants. Where the High Court is satisfied that there shall be total failure of justice in case interference under Section 115 of the Code as amended by Act of 1976 is not made or non interference therein would cause irreparable injury to the party against whom the impugned order is made, to do substantial justice or more particularly to rule out injustice to that party, this power is retained. Thus, by the Act, 1976 the power of revision under Section 115 under the Code of the High Court was not totally curtailed, however, exercise thereof was some what circumscribed.

23. By the Act, 1999 the Legislature has deleted Clause (b) of proviso to Sub-section (1) of Section 115 of the Code. By virtue of this amendment the powers of the revision petition of the court under Section 115 of the Code which was some what circumscribed under the Act, 1976 has further been circumscribed. After amendment in Section 115 of the Code vide Act of 1999 the exercise of powers under Section 115 of the Code is available to the High Court only in the case where it is satisfied that variance or reversal of the order of the court subordinate challenge in the revision petition made in the suit or other proceedings would result in final disposal of the suit or other proceedings.

24. Section 104 of the Code provides for appeal against the orders enumerated therein, passed by the court subordinate. This Section reads as under,

'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:-

(xxxxxxxxxxxxx)

(ff) an order under Section 35A;

(ffa) 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;

(g) an order under Section 95;

(h) 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;

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

Provided that no appeal shall lie against any order specified in Clause (ff) on the ground that no order, or an order for the payment of a less amount, ought to have been made.

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

25. Section 105 of the Code provides, save as otherwise expressly provided no appeal shall lie from any order made by a court in exercise of its original or appellate jurisdiction, but, where decrees 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.

26. Sub-section (2) of Section 105 of the Code carved out an exception that the party aggrieved by an order of remand from which an appeal lies does not appeal therefrom shall thereafter be precluded from disputing its correctness.

27. Order 43 of the Code detailed the orders which are made appealable under Sub-section (1) of Section 104 of the C.P.C. The reference here fruitfully may have also to Rule 1 -A of Order 43 of the Code. This Rule 1 -A has been inserted in the Code by Act of 1976 vide Section 89 thereof with effect from 1.2.1977.

28. Section 105 of the Code relates both the appealable and non appealable orders passed by the court. Thus, the order appealable or non appealable made by a court in exercise of its original or appellate jurisdiction is not immuned altogether from challenge. Section 105 of the Code gives a statutory right to the person aggrieved of an order made by a court in exercise of its original or appellate jurisdiction to challenge it in an appeal filed against the decree, that is final judgment in the matter. In the appeal filed against a decree any error, defect or irregularity in any order of the court whether appealable or non appealable, affecting the decision of the case is permissible to be set forth as a ground of objection in the memo of appeal.

29. From a conjoint reading of the provisions of Sections 104 and 105 of the Code, the intention of the Legislature is clear not to provide finality to the order made by the court subordinate in its original or appellate jurisdiction. Against the order of the court subordinate made in its original or appellate jurisdiction whether appealable or non appealable the remedy to challenge its legality, propriety and correctness has been provided by the Legislature under the Code. That apart the reference here may have also to the provisions of Article 227 of the Constitution of India. In view this clear and unambiguous position of law, this right of revision to a litigant and exercise of the revisional power by this court have further been circumscribed by the Act, 1999.

30. From time and again the amendment in Section 115 of the Code appears to have been necessitated as despite of the settled legal position by the Privy Council and Hon'ble the Supreme Court and further despite of giving a word of Caution, the High Courts remained very liberal in entertaining the revision petition

ignoring its scope of exercise of power under Section 115 of the Code. In the case of *M.L. and B Corporation v. Bhutnath* (1), their Lordships of the Hon'ble Supreme Court held that where the conditions necessary for the applicability of this Section (Section 115 of the Code) are not satisfied the High Court cannot interfere. These conditions need not to be repeated as in the preceding part of the judgment the Sub-section (1) of Section 115 of the Code has already been reproduced. In order to maintain a revision petition there must be error related to jurisdiction committed by the courts subordinate either by way of assumption of jurisdiction which it does not have or failure to exercise jurisdiction which it has or by exercising its jurisdiction illegally or with material irregularity.

31. While exercising the jurisdiction under Section 115 of the Code as it stood prior to its amendment by the Act, 1976 or the Act, 1999 or the Act, 2002, High Court was not competent to correct errors of fact, however, gross or even errors of law unless the said errors have relation to jurisdiction of the court subordinate to try the dispute itself. Clause (a) and (b) of Sub-section (1) of Section 115 of the Code on their plane reading quite clear do not cover this case. The words in Clause (c) of Sub-section (1) of Section 115 of the Code 'illegally' and 'with material irregularity' do not cover errors either 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 of Section 115 (1) of the Code as what their Lordships of the Hon'ble Supreme Court said in the case of *D.L.F. Housing etc. Company v. Swarup Singh* (2), 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, after the prescribed formalities have been complied with.

32. The legal position was authoritatively laid down by the Privy Council as regards to the ambit and scope of Section 115 and exercise of power by High Court under that provision as far back as 1894 in *Rajas Hamir Hassan Khan v. Sheo Baksh Singh* (3). The Privy Council again pointed out in *Bala Krishna Udayar v. Vasudeva Iyyar* (4), that the Section 115 of the Code is not directed against the conclusion of law or fact in which question of jurisdiction is not involved. View of the Privy Council was approved by their Lordships of the Hon'ble Supreme Court in *Kesar Dev v. Radha Kishan* (5). In *D.L.F. Housing etc. Company v. Swarup*

Singh (supra), their Lordships of the Hon'ble Supreme Court observed that the view expressed by the Privy Council and approved by the Supreme Court in the case of Kesar Dev v. Radha Kishan (supra) has since been reaffirmed in numerous decisions. The Hon'ble Supreme Court in para No. 8 of this judgment observed that the High Court does not seem to have averted to the limitation imposed on its power under Section 115 of the Code. It is further observed merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the Court below in his manner of dealing with this question. The Hon'ble Supreme Court said that it seems that the High Court in the matter treated the revision virtually as if it was an appeal. In para No. 7 of this judgment Hon'ble Court noticed that the mass of the reported cases only served to show that the High Courts do not always appreciate the limits of their jurisdiction under Section 115 of the Code. After this decision of the Hon'ble Supreme Court the Code appears to have been amended in the year 1976 and the powers of High Court under Section 115 thereof were circumscribed. The experience if we go by the case decided by the High Courts, the revision petitions under Section 115 of the Code, despite of circumscribing the exercise of powers thereunder are taken as if it is exercising appellate power. The recommendations of the Law Commission, the reference of which is made in preceding part of the judgment for deletion of Section 115 of the Code appears to have been made as the High Courts have taken and decided the revisions as if they were sitting in appellate jurisdiction. Though the recommendations of the Law Commission were not found favour with the Joint Committee of the Parliament but the power of the High Courts under Section 115 of the Code has further been circumscribed by the ACT. 1999. Examining this matter in the context of the legal position as propounded by the Privy Council and the Hon'ble Supreme Court, the recommendation of the Law Commission and ultimate amendments made in Section 115 of the Code, I am of the considered opinion that the meaning to the word 'proceedings' in this provision cannot be read as what Shri K.K. Sharma, the learned counsel for the defendant petitioners submitted. An application filed in the suit by either of the party thereto

for the interim orders which are in furtherance of the proceedings of the suit is taken to be a proceedings for the purpose of the Section 115 of the Code, it will result conferring upon the High Court power of the revision much wider than what it was there earlier to the amendment made therein under the Act, 1999. There, if what it is contended by Shri Sharma is accepted, will remain no distinction or difference in the suit and the proceedings. Intention of the Legislature in bringing this amendment in Section 115 of the Code is clear and specific. It is intended to further circumscribe the power of the High Court under Section 115 of the Code and as a result thereof it is available where vary or reverse of the order of the court subordinate challenged in the revision petition would finally dispose of the suit or the other proceedings. The intention of the Parliament is to bar entertainment of the revision under Section 115 by the High Courts against the orders of interim nature i.e. which do not finally adjudicate and decide the dispute between the parties in the suit. Having gone through the impugned order there cannot be two view and already as said earlier in the preceding part of the judgment it is interim in nature and vary or reverse thereof will certainly not result in final adjudication and decision of the dispute between the parties in the suit.

33. From various amendments made in the C.P.C. by the Acts, 1999 and 2002 the legislature has given out time bound programme for the disposal of the civil suits. That appears to have been done to obliterate dilatory tactics adopted by the litigants in the civil suit. One of the dilatory tactics ordinarily adopted by the litigants is filing of frivolous and baseless applications for interlocutory orders and then to carry the matter to the High Court in revisions and thereby to achieve the goal to stall the trial of the suit. High Courts under Section 115 of the Code, as what said by the Hon'ble Supreme Court in D.L.F, Housing etc. Company's case (supra), may not always appreciate the limits of its jurisdiction under Section aforesaid and the revision petition is dealt with as if it is an appeal. Unless these dilatory tactics adopted by the litigants are checked and curbed, very purpose and object of making amendments in the C.P.C. for disposal of the suit within time bound programme shall stand defeated. Thus, having looked at this provision in this context, background and subject, there remain no doubt that the legislature intent is to take out the power of the revision of the High Courts against the interim orders of the courts subordinate.

34. It is true, ordinarily legislature not using a word in the statute which has no meaning, object of purpose. In Section 115 of the Code Shri Sharma, learned counsel for the petitioners, is correct that word proceedings cannot be taken superfluous or meaningless Word 'proceedings' is not defined in the Code. Dictionary meaning thereof may not always provide help and assistance to understand its meaning, object and purpose in the statute. But equally true many times dictionary meaning may provide some guide or help to understand and appreciate the meaning, object and purpose thereof in the Statute, though it may not be conclusive. As per the new Lexicon Webster's Dictionary revised and up to day 1987, 'proceedings' means the act of someone who or something which proceeds, a course of action, transactions or negotiations, a legal action, legal measures proceeds. Section 9 of the Code provides that the court subordinate shall (subject to the provisions contained in the Code) have jurisdiction to try all suits of a civil nature excepting the suits of which there cognizance is either expressly or impliedly barred. Section 15 of the Code provides that every suit shall be instituted in the court of the lowest grade competent to try it. In Section 2 of the Code I do not find definition of the court. Section 4 of the Code provides that in the absence of any specific provision to the contrary, nothing in the Code shall be deemed to limit or otherwise affect any special or local law now in force or and special jurisdiction or power conferred or any special form of procedure prescribed, by or under any other law for time being in force. From this provision of the Code it is clear that the civil court may be conferred jurisdiction to try a petition, application or other proceedings, whatever may be nomenclature by or under any special or local law. These proceedings are not a suit filed under the Code. These are under the special or local law and the same are not registered as a civil suit. There are numerous special or local laws thereunder the jurisdiction has been conferred upon the civil court to adjudicate upon the right, title or interest of the parties thereunder. Reference may have to the Representation of Peoples Act, 1951, the Hindu Marriage Act, 1956, the Hindu Adoption and Maintenance Act, 1956, the Indian Succession Act, the Payment of Wages Act, 1936, the Rajasthan Public Trust Act, the Arbitration and Conciliation Act, 1996, Rajasthan Municipalities Act, Rajasthan Panchayati Raj Act etc. Even under the Rajasthan Tenancy Act there is a provision for reference to the Civil Court of the matter

involving adjudication upon the question of civil right, inter se the parties to the revenue suit. The proceedings filed in the civil court under the special or local laws are numbered as said earlier, otherwise than civil suits. In those proceedings the parties may also file the applications for interim orders. Those are the interlocutory applications and the orders made thereon are interim. These proceedings are presented in the courts subordinate, the orders passed by them on the interlocutory applications therein are subject to revision under Section 115 of the Code by the High Court. To draw and make a distinction the legislature in its wisdom appears to have used the words 'suit' or 'proceedings'. Omission of word 'proceedings' in Section 115 of the Code would have been of very serious consequences and effects, though the interim orders are passed in the proceedings under the special or local laws by the court subordinate but it may not be subject to the revision by this court. This may be another ground that the legislature has not made any distinction in the suit and the proceedings which are filed in the court subordinate under the Code and the special or local laws so far as to the power of revision of the High Court under Section 115 of the Code.

35. As a result of the aforesaid discussion the revision petition itself is not maintainable and, therefore, no useful purpose will be served to grant any indulgence to the defendant petitioners to file process fee and notices and take steps for service thereof on the unserved plaintiff non petitioners.

36. In the result, this revision petition fails and the same is dismissed as having been not maintainable.

37. As a consequence of dismissal of the revision petition, the stay application does not survive and the same is dismissed.