

Chunnilal and ors. Vs. Shanta Devi and ors.

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Court : Rajasthan

Decided On : Sep-25-2000

Reported in : 2007(2)WLN606

Judge : Rajesh Balia and; Sunil Kumar Garg, JJ.

Appeal No. : D.B. Civil Revision Nos. 160, 224, 447 of 1999

Appellant : Chunnilal and ors.

Respondent : Shanta Devi and ors.

Disposition : Revision dismissed

Judgement :

Rajesh Balia, J.

1. Since a common question of law arises in all the above revisions and therefore, they were heard together and are being disposed of by a common order.

2. Facts Of The Case [REVISION No. 160/1999]

The defendant petitioner has filed this revision against the order dated 30.1.1999 passed by the learned Additional Civil Judge (Senior Division) No. 2, Udaipur in Civil Original Suit No. 72 of 1997 whereby the application filed by the defendant-petitioner under Order XIII, Rule 2 CPC for production of evidence after he has

failed to produce documentary evidence under Order XIII, Rule 1 CPC, within the time allowed by the court has been rejected.

This Court vide its order dated 19.2.1999 ordered for the issuance of show cause notices to the non-petitioners as to why the instant revision be not finally disposed of at the admission stage. After service of notices, the revision petition was heard by the learned Single Judge on 8.4.1999. The learned Single Judge vide his order dated 8.4.1999 came to the conclusion that there is a conflict of opinion between the recent decision rendered by this Court in I.B.P. Company Ltd. v. Smt. Chandrabai and Ors. (S.B. Civil Revision Petition No. 222 of 1998, decided on 4.3.1999) and two earlier Division Bench decisions of this Court in Chouth Mai v. Fazal Hussain 1991 (1) RLW 9 and Bharosilal v. Mool Chand 1991(2) RLW 292 regarding maintainability of the revision petition in respect of an order refusing to entertain evidence under Order XIII, Rule 2 CPC and, therefore, he referred the case to be decided by a larger bench on the following points:

(1) Whether proviso (b) of Sub-section (1) of Section 115 CPC is to be interpreted in the light of Sub-section (2) of Section 115 CPC, which clearly provides that the High Court shall not under amended Section 115, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto?

(2) Whether in a civil suit against which an appeal lies, if trial court after settlement of issues passed an order in exercise of its positive discretion receiving documentary evidence under Order 13, Rule 2 CPC after giving an opportunity to other party to adduce documentary evidence in rebuttal yet a revision is maintainable under amended Section 115 CPC against such order?

(3) Whether principle of merger is extendable in a civil suit against which an appeal lies to the issues decided and orders passed by trial courts in between before passing the decree and such issues decided and orders passed in between passing the decree by the trial courts merged in the decree and also become integral part of such decree so such issues decided and such orders passed are assailable in appeal?

(4) Whether a revision petition under amended Section 115 CPC is maintainable against an order passed by trial court refusing to receive documentary evidence under Order 13, Rule 2 CPC irrespective of the fact that this error can be rectified within the meaning of Clause (a) of Sub-Rule (1) of Rule 27 of Order 47 CPC?

(5) Whether the Division Bench of this Court in the case of Bharosi Lal (supra) has no jurisdiction to travel beyond the terms of its reference made to it holding in paragraph 25 of its decision that if in a case, without existence of sufficient cause, the court allows an application filed under Order 13, Rule 2 CPC then the Court has committed material irregularity in the exercise of its jurisdiction of entertaining the application under Order 13, Rule 2 CPC?

(6) Whether under amended Section 115 CPC mere jurisdictional error is not sufficient to entertain a revision unless any one of the conditions enumerated either under proviso (a) or under proviso (b) of Sub-section (1) of Section 115 CPC together with non-obstante Sub-section (2) of the said Section are objectively satisfied? '

(7) Whether the expression 'no appeal lies' used under Sub-section (1) of Section 115 CPC has reasonable nexus with the expression 'against which appeal lies either to the High Court or to any Court subordinate thereto' used under newly inserted Sub-section (2) of the said Section and if so its effects on scope of maintainability of revision under amended Section 115 CPC?

3. Facts of revision petition Nos. 224 of 1999 and 447 of 1999

Revision Petitions No. 224 of 1999 and 447 of 1999 are also arising out of the order rejecting the applications filed by the defendants-petitioners for producing the evidence on record under Order XIII, Rule 2 CPC by the learned trial court and these revisions have also been ordered to be heard alongwith Revision No. 160 of 1999. That is how, all the three revisions are before us.

4. The order of reference notices that because of Sub-section (2) of Section 115 CPC introduced by the Civil Procedure (Amendment Act) 1976, since the order rejecting the application under Order XIII, Rule 2 CPC can be challenged in appeal

against the final order or decree before this Court or before the lower court and where an appeal lies and because the first appellate court has jurisdiction to allow the additional evidence under Order XLI, Rule 27 CPC, the remedy under Section 115 CPC against the erroneous or wrongful rejection of an application under Order XIII, Rule 2. CPC is not maintainable. He has further noticed that in the earlier decision in I.B.P. Company Ltd.'s case (supra), it has been held that no revision lies against an order refusing to permit fresh evidence under Order XIII, Rule 2 CPC. The learned Judge also held that there is no distinction between maintainability of the revision against an order allowing an application under Order XIII, Rule 2 CPC for production of evidence and against an order rejecting an application under Order XIII, Rule 2 CPC. The learned Judge has taken notice of the above referred two Division Bench decisions of this Court in I.B.P. Company Limited's (supra). In the order of reference, the learned Single Judge came to the conclusion that though there is no conflict of opinion about non-exercise of revisional jurisdiction in the matter of allowing an application under Order XIII, Rule 2 CPC. But conflict exist whether the power under Section 115 CPC is exercisable in appropriate cases where an application under Order XIII, Rule 2 CPC has been rejected?. This conflict has come into existence because I.B.P. Company Ltd.'s case (supra) has been decided without noticing two earlier Bench decisions.

5. A perusal of the questions referred to above go to show that the real controversy about which the learned Judge was of the opinion that there exists conflict and which requires resolution as to interpretation of Section 115(2) CPC, which prohibits the High Court from varying or reversing any decree or order against which an appeal lies to the High Court or to any court subordinate thereto. The learned Judge was of the opinion that since the effect of Sub-section (2) of Section 115 is that an order refusing to entertain evidence under Order XIII, Rule 2 CPC does not render a litigant remedyless because he can either challenge the order in an appeal against the final decree or at the later stage of the proceedings, on appeal being filed the provisions of Order XLI, Rule 27 CPC are applicable once again for the litigant to apply before the appellate authority to produce such additional documents.

6. We, therefore, propose to decide this reference on the question regarding effect of Sub-section (2) of Section 115 CPC read with the provisions of Order XLI, Rule 27 CPC instead of answering the questions ad seriatum.

7. The provision as it existed originally under the Code prior to its amendment vide Amending Act of 1976 reads as under:

Section 115. 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 the jurisdiction illegally or with material irregularity.

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

8. The amendment in Section 115 CPC has brought about two changes in the existing provisions. Firstly, the existing Section 115 CPC has been renumbered as Sub-section (1) and a proviso has been added thereto. Not only this, Sub-section (2) has been inserted alongwith Explanation, The amended provision reads as under:

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

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

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

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

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

Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where

(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.

9. At the very outset, we wish to make it clear that the question regarding maintainability of the revision by the High Court is a question distinct and independent of the case in which the High Court shall interfere with the orders passed by the court subordinate thereto. The former concerns the power to call for record of courts subordinate to it by a High Court and relates to existence of conditions precedent on the basis of which such exercise of jurisdiction under Section 115 depends and in the absence of existence of such conditions, there is no authority or jurisdiction to call for the record of subordinate courts for examination in the matter in exercise of jurisdiction under Section 115 CPC. The latter relates to stage subsequent to exercise of powers by the court spelling out the circumstances in which the court in exercise of its jurisdiction under Section 115 CPC can vary or modify the order in question. In which case, which the High Court may vary, modify or pass such other orders as it thinks fit depends on the authority exerciseable by the High Court under Section 115 CPC. The maintainability of the revision depends upon two conditions firstly that it must relate to a case decided by the court subordinate to the High Court and secondly in connection with the case decided, no appeal lies thereto. Once these two

conditions are fulfilled, it cannot be said that the application for revision is not maintainable. The question where in a given case, the court would exercise the jurisdiction to interfere with the orders made by the subordinate court in a case decided would depend upon the facts and circumstances of each case depending upon the conditions imposed on exercise of such powers by the High Court in a case where the revision is maintainable.

10. The question under consideration referred to us is about the former viz., when the petition can be restricted at the threshold without examining the question whether the High Court would interfere in a given case or not. So far as the conditions for maintainability of the revision are concerned, the learned Judge has raised no issue about the question whether an order dismissing the application under Order XIII, Rule 2 CPC amounts to a 'case decided' within the meaning of Sub-section (2) Section 115 CPC or not.

11. There has been a difference of opinion amongst various High Courts prior to the matter was set at rest by the Supreme Court in *Major S.S. Khanna v. Brig, F.J. Dillon* : [1964]4SCR409 . There has been expression of opinion by some courts that 'case decided' would mean final termination of proceedings before the court subordinate to the High Court and would not include decision of a part of the proceedings or interlocutory orders. On the other hand, some courts have taken the view that the expression 'case decided' is not confined to the entirety of proceedings in a civil court but it would include a part of the proceedings as well as interlocutory orders, which are not appealable under Section 104 read with Order 47, Rule 1 CPC. In *Major S.S. Khanna's case* (supra), the Supreme Court held that the expression 'case' is not defined in the Code nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court and in broad sense, the Courts defined 'case decided' to mean that it includes a proceeding in a civil court in which the jurisdiction of the court is invoked for the determination of some claim or right legally enforceable.

In *Major S.S. Khanna's case*, Shah, J. speaking for the court said:

The expression 'case' is a word of comprehensive import: it includes civil proceedings other than suits, and is not restricted by anything contained in the

Section to the entirety of the proceedings in a civil court. To interpret the expression 'case' as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence which the jurisdiction to issue writs, and the supervisory jurisdiction are not subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice.

The court further explained the distinction between the existence of power and restraint and exercising discretion in exercise of such powers after interpreting the word 'case decided':

That is not to say that the High Court is obliged to exercise its jurisdiction when a case is decided by a subordinate Court and the conditions in Cls. (a), (b), or (c) are satisfied. Exercise of the jurisdiction is discretionary; the High Court is not bound to interfere merely, because the conditions are satisfied. The interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding or by a suit, and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist, should exercise its jurisdiction.

The above ratio completely fortifies us in our conclusion about distinction between conditions attracting Jurisdiction and matter of discretion in exercise of such jurisdiction when attracted.

12. The question whether rejection of an application under Order XIII, Rule 2 CPC for producing evidence amounts to 'case decided' within the meaning of Section 115 CPC came up for consideration before a Division Bench of this Court in Chouth Mal's case (supra). The court relying on the provisions of the newly inserted explanation to Sub-Sec. (2) of Section 115 CPC, as reproduced above, came to the conclusion that it has widened the scope of 'case decided' and it has been provided that 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. Noticing this amendment in the Code, the Court held that any order

which though does not determine any right or obligation of the parties in controversy but which may ultimately affect the decision of the suit should be allowed to be included in the expression 'any order' made and, therefore, in the expression 'case decided' because that order will have material bearing on the ultimate decision of the case. In reaching this conclusion, the court relied on a decision of the Orissa High Court in *Tata Iron and Steel Co. v. Rajrishi Exports* AIR 1979 Orissa 179 and an earlier decision of this Court in *Ghewar Chand v. Gajsingh* 1982 RLW 229. We are in respectful agreement with the aforesaid view.

13. Coming to the second issue raised by the learned Single Judge that since in the appellate forum, in an appeal against a final decree in the suit, a party has liberty to make a fresh application under Order XLI, Rule 27 CPC, which power has to be exercised independent of the order made by the learned lower court and the appellate court has liberty to examine the question whether the evidence now sought to be produced by the applicant is one which ought to have been admitted but has wrongly been refused by the lower court. We regret our inability to agree with the above point of issue.

14. As pointed out earlier, existence of jurisdiction to interfere under Section 115 CPC is one thing which is germane consideration for deciding maintainability of the revision before the Court. The question whether power should be exercised for interfering with the order under revision is quite another thing which undoubtedly would depend on the facts and circumstances of each case. As noticed by us in the ratio referred to above in the case of *S.S. Khanna's case* (supra), it is clear that availability of such remedy in future or at the later stage of proceedings may be a relevant consideration to exercise discretion whether to interfere or not to interfere but that cannot be a ground to hold that revision is not maintainable.

15. So far as Sub-section (2) of Section 115 CPC is concerned, it has only made one departure from the original provision. The unamended provision confined the inhibition against exercise of jurisdiction to interfere in the revision petition only in a case where the appeal lay thereto that is to say in case where the impugned order can be appealed before the High Court. In such event, the High Court would not be entitled to interfere in exercise of its jurisdiction under Section 115 CPC. In

other words, if the order sought to be revised is appealable under Section 104 read with Order XLVII CPC to the High Court, or under any other provision of law, the revisional powers cannot be exercised. This refers to cases where the order passed by the subordinate court itself is further appealable to the High Court directly by way of first appeal or by way of second appeal, if such order is appealable before a court subordinate to High Court and against the order passed by subordinate appellate court further appeal is provided to High Court then too it can be said that the order in question is appealable to the High Court and therefore, revision in respect of such a 'case decided' is not maintainable. However, if the order is not directly appealable by way of first appeal or by way of second appeal from that order, there was no bar to the maintainability of the revision petition. To explain, where the appeal is provided against the decree as a matter of course, under Section 96 CPC and any order passed in appeal under Section 96 CPC in certain circumstances, a second appeal is also provided against the appellate decree under Section 100 CPC to the High Court. Therefore, in such a case where a (second) appeal lies to the High Court because there is an intermediary appeal not directly to the High Court but to a court subordinate to the High Court from which clearly appeal lay to the High Court, such an order would fall in the expression in which an appeal lies to the High Court. However, where the order is not appealable under Section 96 CPC but is an order appealable under Section 104 CPC and law prohibits no further appeal from any order passed in appeal under. Section 104 or likewise against a decree passed by a court of small causes. Thus, where in respect of an appealable order under Section 104 CPC, the appeal lay to the Court subordinate to the High Court and no second appeal lay to the High Court, in such circumstances, the provisions of Section 115 CPC as they existed prior to the amendment of 1976, a revision was maintainable. Notwithstanding such impugned order could be challenged in appeal against final decree/order before the High Court.

16. Insertion of Sub-section (2) of Section 115 CPC in 1976 extends absolute prohibition against exercise of any discretion in an order revisable under Section 115(1) CPC even in a case where any appeal against the impugned order lies to the court subordinate to the High Court. Sub-section (2) of Section 115 CPC postulates prohibition of exercise of jurisdiction by the High Court to vary or

reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto. However, it does not make any deviation from the fact that unless the order under challenge is appealable directly to the High Court or to any court subordinate to the High Court, from the purview of jurisdiction of the High Court under Section 115 CPC on the ground of maintainability of the revision petition, merely because the order is ultimately challengeable in an appeal from the final decree. That is the consistent view taken by the Supreme Court.

17. In Major S.S. Khanna's case (supra), the matter directly came up for consideration before the Supreme Court that whether the High Court has power to set aside the order which does not finally dispose of the suit and where from the decree or from the final order passed in proceedings, an appeal is competent. This contention was raised while relying on the expression 'in which no appeal lies thereto.' The Court repelled the above contention while holding:

Once it is granted that the expression 'case' includes a part of a case, there is no escape from the conclusion that revisional jurisdiction of the High Court may be exercised irrespective of the question whether an appeal lies from the ultimate decree or order passed in the suit. Any other view would impute to the Legislature an intention to restrict the exercise of this salutary jurisdiction to those comparatively unimportant suits and proceedings in which the appellate jurisdiction of the High Court is excluded for reasons of public policy. Nor is the expression 'in which no appeal lies thereto', susceptible of the interpretation that it excludes there exercise of the revisional jurisdiction when an appeal may be competent from the final order. The use of the word 'in' is not intended to distinguish orders passed in proceedings not subject to appeal from the final adjudication from those from which no appeal lies. If an appeal lies against the adjudication directly to the High Court, or to another Court from the decision of which an appeal lies to the High Court, it has no power to exercise its revisional jurisdiction, but where the decision itself is not appealable to the High Court directly or indirectly, exercise of revisional jurisdiction by the High Court would not be deemed excluded.

In coming to this conclusion, a Full Bench decision of this Court in *Pyarechand v. Dungar Singh and Purohit Swaroop Narayan v. Gopinath and Ors.* was overruled, wherein this Court has propounded the same view as stated by the learned single Judge in *I.B.P. Company Ltd.'s case (supra)* in the following words.

that where it is open to a party to raise a ground of appeal under Section 105 of the Code from the final decree or order with respect to any order which has been passed during the pendency of a suit, it should be held that an appeal in that case lies to the High Court within the meaning of the term in which no appeal lies thereto' appearing in Section 115 Civil Procedure Code,' and the exercise of revisional jurisdiction of the High Court is excluded.

18. In *Vidya Vati v. Devi Das* : [1977]2SCR182 P.N. Bhagwati, J. speaking for the court rejected the plea that since the order of the learned Sub-Judge impugned in revision before the High Court was an order allowing the review application, it was appealable under Order XLIII, Rule 1, Clause (w) of the Code of Civil Procedure and hence no revision was competent to the High Court under Section 115 of the Code of Civil Procedure and said:

Now, there can be no doubt that under Section 115 of the Code of Civil Procedure a revision application can lie before the High Court from an order made by a subordinate court only if no appeal lies from that order to the High Court. The words of limitation used in Section 115 are 'in which no appeal lies thereto' and these words clearly mean that no appeal must lie to the High Court from the order sought to be revised, because an appeal is a much larger remedy than a revision application and if an appeal lies, that would afford sufficient relief and there would be no reason or jurisdiction for invoking the revisional jurisdiction. The question, therefore, here is whether an appeal against the order made by the learned Sub-Judge allowing the review application lay to the High Court. If it did, the revision application would be clearly incompetent. Now order XLIII, Rule 1 Cl. (w) undoubtedly provides an appeal against an order allowing a review application but the order allowing the review application in the present case was made by the learned Sub-Judge and hence, an appeal against it lay to the District Court and not to the High Court and obviously, since no appeal lay against the order of the

learned Sub-Judge to the High Court, the revision application could not be rejected as incompetent.

19. We may notice that in this position, a change has been brought about by inserting Sub-section (2) to Section 115 CPC providing that if an appeal lies either to the High Court or the court subordinate thereto against the impugned order, no revision would lie. However, where any appeal lay either to the court subordinate to the High Court or to the High Court in respect of the impugned order, there is no change in the position under the law merely because the order is challengeable in the final order or the decree, the jurisdiction to entertain revision is not excluded. The limitation imposed on appeal has been extended to all the appealable orders where the appeal lay to the High Court or to any court subordinate thereto but has not been extended to exclude the jurisdiction of the High Court where no appeal lie against the impugned order itself. Such a position remain unchanged.

20. In *Yakub Ali v. F. Haji Taj Khanji Ibrahimji* 1983 RLR 271, following the principle enunciated in *S.S. Khtмна's case* AIR 1964 SC 497, and overruling the decision to the contrary in *Ramchand v. Laxmi Kumar and Narain Lal v. Someshwar Dayal* (S.B. Civil Revision No. 62 of 1977, decided on 6.2.1979, by M.L. Joshi, J.) said:..It was clearly Lald down in *S.S. Khanna's case* that where the decision itself is not appealable to the High Court directly exercise of the revisional jurisdiction by the High Court would not be deemed excluded. Apart from that, the object behind Section 115 CPC is to provide means to an aggrieved party to obtain correction or rectification of non-appealable order though this power has to exercised on the fulfilment of all the conditions laid down in it. If the interpretation which has been taken in *Narayanlal's case* (supra) and *Ramchand's case* (supra) is accepted, that will, in our opinion, frustrate the very purpose and object of Section 115 CPC. Apart from this, it should also not be lost sight of that, amongst others, the explanation to Section 115 unambiguously lays down that in Section 115, expression 'any case which has been decided' includes any order made in the course of a suit or any other proceeding. This explanation is more than clear that 'case decided' means even a part of case and as such on the fulfilment of the conditions, laid down in proviso (b), interference can be made with the order refusing to record evidence... The mere fact that such an order can be challenged

by setting forth an objection in memo of appeal against the decree under Section 105 CPC would not be sufficient for not invoking the revisional jurisdiction under Section 115 CPC on the ground that as that order can be challenged by setting forth as a ground of objection in the memo of appeal against the decree in an appeal, it cannot be said to occasion failure of justice or not to have caused irreparable injury to the party against whom it was made. On the basis of S.S. Khanna's case and Baldevdas's case and the Explanation to Section 115 CPC, we are unhesitatingly of the opinion that the interlocutory order relating to jurisdiction error, if it falls within the expression 'any case which has been decided' can be, challenged in revision provided the aggrieved party satisfies the High Court that order has resulted in failure of justice or has caused irreparable injury to him. The contrary view taken in Narainlal's case (supra) and Ramchand's case is overruled.

21. In Chouthmal v. Fazal Hussain's case (supra), the question No. 2 of reference reads as under:

Whether no revision would lie against an order by which a subordinate court has refused to accept documentary evidence under Order XIII, Rule 2 CPC notwithstanding that would cause has been shown for the production and the document is of vital material importance?

The Court said:

On a careful consideration of the entire authorities that have been cited by both the learned counsel for the parties, we can safely say that the illegal assumption and non-exercise of jurisdiction have reference usually to the initial stage of a case. But acting illegally or with material irregularity in the exercise of jurisdiction comes after the Court has validly assumed jurisdiction. If after assuming such a jurisdiction which is vested in the Court, the Court acts illegally or with material irregularity which means that where there is exercise of jurisdiction which the Court possesses, but the exercise has been in a manner which is illegal or materially irregular than Cl. (c) would be attracted. It must be kept in view that these powers which have been conferred on the revisional courts by Section 115 CPC are intended to be exercised with a view to subserve and not to defeat the

ends of justice.

22. On the above principle, the Court was further of the view that order refusing or allowing documentary evidence to be produced at a later stage under Order XIII, Rule 2 CPC is a matter of Clause (c) of Section 115 CPC in the category of 'material irregularity and illegality' in exercise of the jurisdiction by the Court. Ordinarily allowing the evidence will not be a case resulting in failure of justice. The Court said:..if in deciding such cases, some illegality or material irregularity has been committed in the exercise of the jurisdiction than certainly the order is revisable under Section 115 CPC because such cases will come under the category of Clause (c) of Sub-section (1) of Section 115 CPC. However, before the Court can vary, or reverse such an order, it will have to further satisfy itself that the order if it has been made in favour of the party applying for revision would finally dispose of the suit or other proceedings or the order is of such an character that if allowed to stand would occasion a failure of justice or cause irreparable injury to any party against whom it was made.

23. The same view was expressed in *Har Vilas v. Kalyan Prasad and Ors.* 1985 RLR 928.

24. The question again fell for consideration before Division Bench in *Bharosilal v. Moolchand* 1991 (2) RLW 292 on a reference Q.No. 2 referred to the Court read:

Whether no revision petition would lie against the order which the subordinate Court has refused to accept documentary evidence under Order 13 Rule 2 CPC notwithstanding the fact that good cause has been shown for late production and the document is of vital material importance?

The Court after considering a large number of decisions including the decision of Supreme Court in *S.S. Khanna's case* (supra) and earlier decision of this Court agreed with the view expressed in *Yakub Ali's case* (supra) and held:

We may now analyse Section 115 of the Code of Civil Procedure. This Section provides that the High Court can call for the record of any case, which has been decided by the Court subordinate to such High Court and in which no appeal lies

thereto and if such subordinate Court appears to have exercised jurisdiction not vested in it by law or have failed to exercise jurisdiction so vested in it or to have acted in exercise of its jurisdiction illegally or with material irregularity. In such a case, the High Court can make an order as it thinks fit. Thus, the High Court can entertain revision petition in a case where it appears to the court that the subordinate court has exercised jurisdiction not vested in it by law or have failed to exercise jurisdiction so vested in it or to have acted in exercise of its jurisdiction illegally or with material irregularity. A further rider has been provided in the Proviso to Sub-section (1) of Section 115 CPC. The rider is that the High Court shall, under thisSection vary or reverse any order, made or any order deciding an issue, in the course of a suit or other proceeding except where an order if it had been made in favour of a party applying for revision would have finally disposed of the suit or other proceeding or an order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it made. Thus, these conditions are required to be fulfilled before the interference in revision petition can be made by the High Court in exercise of its power under Section 175 (1) CPC. There is a further provision in Section 115, which provides that the High Court shall not under Section 115 vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate to it. An explanation has also been added to Section 115 on the recommendations of the Joint Committee of Law Commission. There was conflict of opinion amongst various High Courts about the interpretation of the phrase 'case decided'. The Joint Committee recommended that the expression 'case decided' should be clarified so as to include the interlocutory order. Apparently, the explanation has been added after taking into consideration the observations made by their Lordships of the Supreme Court in S.S. Khanna v. Brg. F.J. Dhillon and Baldevdas v. Fiolmasthan Distribution. The explanation now makes it clear that the expression 'case decided' includes any order made or any order deciding any issue in the course of the suit or other proceedings. Clearly by addition of this explanation, the scope of the expression 'case decided' has been widened. Nevertheless, before an order made by a subordinate court is revised by the High Court, the Conditions specified in Section 115(1) CPC as well as those specified in the Proviso to Sub-section (1) will have to be fulfilled. The view that the explanation added to Section

115 by 1976 Amending Act has widened the scope and ambit of Section 115 finding support from the decision of Orissa High Court in Tata Iron and Steel Company v. Rajrishi Experts and in our opinion, the judgment of Justice M.C. Jain (as he then was) in Ghewar Chand's case lays down correct principle of law.

The court further expressed opinion that was accorded with the view expressed in Chauthmal's case (supra). It must always be remembered that the powers which have been conferred on the revisional court by virtue of Section 115 are intended with a view to subserve the ends of justice and not to defeat them. Now if, under Order 13, Rule 2 CPC a party applies for producing documentary evidence and offers sufficient cause to the satisfaction of the court and still without assigning any reason, the court refuses to exercise its discretion in favour of the party making an application, it is certainly a case where the order of the court suffers from material irregularity and in the exercise of jurisdiction vested in it. A revision petition against such an order will clearly be maintainable. Similarly if in a case, without the existence of sufficient cause, the court allows an application filed under Order 13, Rule 2, it will have to be held that the court has committed material irregularity in the exercise of its jurisdiction of entertaining application under Order 13, Rule 2 CPC. In that event also, a revision petition will be maintainable. Of course, it will be for the High Court to consider as to whether failure of justice has been occasioned on account of passing of that order and then only the court will be entitled to pass order accepting the revision petition.

and answered the question No. 2 as under:

We answer the second question in affirmative and hold that the revision would lie against an order by which the subordinate court has refused to accept documentary evidence under Order 13, Rule 2 CPC.

24. Thus, we are fortified in our conclusion with the view expressed by this Court consistently on the wholesome reading of Section 115 after its amendment. In our opinion, there is hardly any material to raise any doubt about existence of inconsistent precedents amongst this Court so as to require redetermination of settled issues all over again.

25. The order making the reference has not referred to any supportive decisions to raise any doubt about the Division Bench decisions of this Court in Chouthmal's case (supra) and Bharosilal's case (supra) regarding maintainability of the appeal which could have justified making of reference to this larger Bench of this case. It is well settled principle of law that when two binding precedents are operative in the field, the practice is well settled that where there is a difference of opinion with the binding precedent of the Division Bench of the same High Court, the binding precedent of the Division Bench of the same High Court binds all benches hearing the case singly and cannot be overruled by the single Judge and there is no necessity to make reference to the larger Bench as the judgment of the larger bench is already in operation when there is no other binding precedent which is in conflict of same.

26. We have already pointed that sofaras conditions (a) to (c) of Sub-section (1) of Section 115 as well as conditions (a) and (b) of the proviso appended to Section 115(1) of the CPC are concerned, they are principles governing exercise of discretion by the court in any proceeding or the case decided in respect of which no appeal lies either to the High Court or to the court subordinate to the High Court, but does not affect maintainability of the revision. Even if the revision petition is maintainable, the Court would not exercise its discretion to vary or modify or reverse such an order in exercise of revisional jurisdiction unless the case falls into in one or the other Clauses (a) to (c) of Section 115(1) of the CPC. The illegal assumption of jurisdiction not vested in the court, or failure to exercise jurisdiction vested in it by law usually relate to initial stage of a case, but acting illegally or with material irregularity in the exercise of the jurisdiction comes after the court has validly and lawfully assumed jurisdiction. If in exercise of a jurisdiction vested in it, any court acts with illegality or with material irregularity i.e. where there is a exercise of jurisdiction which the court possesses but the exercise of such jurisdiction has been in a manner which is illegal or materially irregular, then Clause (c) of Section 115(1) would be attracted. It must always be remembered that the powers which have been conferred on the revisional court by virtue of Section 115 are intended with a view to subserve the ends of justice and not to defeat them. Therefore, in our opinion, where an irreparable injury is caused to the petitioner if the order is allowed to stand or where it may occasion failure of

justice or it would result in termination of proceedings finally do not affect maintainability of the revision, but are considerations which are germane for making an order in exercise of its jurisdiction under Section 115 of the CPC by the High Court.

27. Since there is not dispute that rejection of an application under Order XIII, Rule 2 CPC amounts to case decided within the meaning of Section 115 CPC and no appeal lay against such an order under Section 104 read with Order XLIII CPC before any court subordinate to the High Court or to the High Court it does not affect maintainability of the revision petition merely because at the appellate stage, the correctness of the order can be challenged or the petitioner is having other alternative remedy, in appeal against final decrees.

We, therefore, hold that revision in respect of an order passed under Order XIII, Rule 2 CPC is maintainable.

28. As all the three revisions have been referred to this Court for expressing its opinion and counsel for the parties have also agreed for final disposal of this case, we propose to deal with each of the case on merits.

Revision No. 160/1999

29. This is a defendant's revision. The petitioner claims himself to be a tenant for a very long time whereas the plaintiff has acquired the property by way of transfer only in April 1980. He filed a civil suit for eviction of the defendant-petitioner from the property in question on the grounds of default in payment of rent and reasonable and bonafide necessity for carrying on the business of his son. Other grounds regarding nuisance, subletting and eviction were also taken. The suit was already adjourned five times for hearing arguments, after closure of evidence of both parties. Taking into consideration the facts and circumstances of this case, the learned Judge held that at this stage allowing fresh evidence would protract the litigation. Taking into consideration the facts of the case, and other circumstances of the case, the learned trial Judge held that no ground for allowing the application is made out. Having gone through the facts and circumstances of the case we are of the opinion that no ground for interference is made out with the

order under revision.

Revision No. 224 of 1999:

30. In this case, the plaintiff-non-petitioner filed a suit against the defendant for eviction and arrears of rent for 1.5.1989 to 31.10.1990. During the pendency of the suit after the stage under Order XIII, Rule 1 was over, the defendant sought permission to bring on record certain documents about payment of rent by him during the year 1983-84 long before the filing of suit which relate to period for which no claim regarding arrears was laid in the plaint. His application was refused on the ground that the suit is for arrears of rent and there is no dispute regarding arrears of rent. These facts unequivocally speaks about opaque motive in moving application for producing evidence unconnected with the dispute. No failure of justice must less substantial failure of justice can be inferred. In this view of the matter, no ground for interference is made out in the impugned order under revision. The same deserves to be dismissed.

Revision No. 337 of 1999

31. During the pendency of the suit, the petitioner-plaintiff filed the application for producing document alleged to be a mortgage deed written in a 'Bahi' on Falguna Sudi 5, Samvat 1990 (1933) at belated stage which was rejected and hence this revision. The learned Judge refused the application on the ground that document was not in possession of the petitioner and it was not mentioned at any stage of the proceeding prior to attempting to produce it through a witness. The document alleged to be a mortgage was with neither registered nor stamped. In such circumstances, such belated attempt was looked with suspicion. In our opinion, the attempt to introduce such document at such a belated stage was rightly foiled by the learned lower court. It does not suffer from any infirmity.

32. We, therefore, find no force in any of these revisions and, therefore, they are all hereby dismissed with no order as to costs.