

REVISION (CIVIL)

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1.1 Sec. 115 CPC as inserted in UP since 01.07.2002 : Sec. 115 CPC in UP

w.e.f. 1.7.2002 reads as under :

“**Section 115 : Revision** : (1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has--

- (a) exercised a jurisdiction not vested in it by law; or
 - (b) failed to exercise a jurisdiction so vested; or
 - (c) acted in exercise of its jurisdiction illegally or with material irregularity.
- (2) A revision application under sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.
- (3) The superior court shall not, under this section, vary or reverse any order made except where,--
- (i) the order, if it had been made in favour of the party applying for revision,
 - (ii) would have finally disposed of the suit or other proceeding; or
 - (iii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.
- (4) 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 superior court.

Explanation-I : In this section,--

- (i) the expression ‘superior court’ means—
 - (a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees;
 - (b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees;
- (ii) the expression ‘order’ includes an order deciding an issue in any original suit or other proceedings.

Explanation-II : The provisions of this section shall also be applicable to order passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement.”

1.2. Revision u/s 115 CPC when to lie ?: A revision u/s 115 CPC against an order passed by the court below lies only when one of the following conditions is fulfilled :

- (i) Order must not be appealable
- (ii) Order passed without jurisdiction
- (iii) Order not passed despite jurisdiction
- (iv) Order passed though within jurisdiction but illegal
- (v) Order passed should be a final order
- (vi) Order passed to occasion failure of justice or irreparable injury

1.3. When can a revisional court in exercise of its powers u/s 115 CPC interfere with the order of the lower court? : In the present case, executing court had passed an order deciding the question as to who was the legal representative of the deceased decree holder. High Court in exercise of its revisional power u/s 115 CPC set aside the order of the executing court. The Hon’ble Supreme Court set aside the order of the High Court by holding that in addition to the nature of proceedings to implead the legal representative to execute the decree, we find that none of the tests laid down in Section 115 of the CPC were satisfied by the High Court so as to set aside the order passed by the executing court. The Supreme Court further held that the High Court in exercise of its revisional jurisdiction u/s 115 CPC can interfere with the order of the subordinate court only when the subordinate court:

- (i) had exercised its jurisdiction not vested in it by law, or
- (ii) had failed to exercise its jurisdiction so vested, or
- (iii) had acted in exercise of jurisdiction illegally, or
- (iv) had acted with material irregularity.
- (v) The mere fact that the revisional court had a different view on the same facts would not confer jurisdiction on it to interfere with an order passed by the revisional court/executing court. Consequently, the order passed by the High Court was set aside and that of the executing court was restored by the Supreme Court. See: Varadarajan Versus Kanakavalli And Others, (2020) 11 SCC 598.

1.4. Revisional Court when not to interfere with the impugned order u/s 115 CPC? : In the present case, the Motor Accident Claim Tribunal, on an application made to it by the claimant, had issued a certificate for the compensation amount to the Collector. The impugned order was passed by the Tribunal in terms of Section 174 of the Motor Vehicles Act, 1988. The Hon'ble Uttarakhand High Court held that there was no good ground to entertain the revision. The learned counsel for the revisionist could not show that the learned Tribunal had not applied its judicial mind while passing the impugned order or the Tribunal had exercised jurisdiction not vested in it by law, or had failed to exercise a jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularities. Hence, the revision was dismissed at the admission stage itself. See: Gurmeet Kaur and Another Versus Amit Kumar, 2022 SCC OnLine Uttarakhand 455.

1.5. Revisional Court cannot interfere with the order of the Subordinate Court merely because it has a different view: The mere fact that the revisional court had a different view on the same facts would not confer jurisdiction on it to interfere with an order passed by the revisional court/executing court. See: Varadarajan Versus Kanakavalli And Others, (2020) 11 SCC 598.

1.6. Meaning of words “illegally” and “material irregularity” occurring in Section 115 CPC: The words “illegally” and “material irregularity” do not cover either errors of fact or law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribes have been complied with. See: Ngaitlang Dhar Versus

Panna Pragati Infrastructure Private Limited and Another, (2022) 6 SCC172 (Para 34).

2.1. Scope of Sec. 115 CPC: In the cases noted below, the scope of Section 115 CPC and the powers of revisional court has been clarified by the Supreme Court as under :

- (i) Revision u/s 115 CPC is not maintainable against interlocutory or interim orders.
- (ii) Revisions filed u/s 115 CPC before amendment in CPC i.e. 1.7.2002 will be covered under the amended Section 115 CPC (in Uttar Pradesh).
- (iii) Right to appeal is a substantive right but right to revision u/s 115 CPC is not a substantive right.
- (iv) No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change, the mode of procedure is altered, the parties are to proceed according to the altered mode without exception unless there is a different stipulation. See: Shiv Shakti Co-operative Housing Society, Nagpur vs. Swaraj Developers & others, AIR 2003 SC 2434.

2.2. Difference between revisional and appellate jurisdiction: Where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become co-extensive with that of the trial court or the subordinate tribunal which is never the case. See: Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).

2.3. Revisional and appellate jurisdiction compared: Revisional jurisdiction in effect and substance is an appellate jurisdiction. But it cannot be equated with a full-fledged appeal. See :

- (i) G.L. Vijain vs. K. Shankar, AIR 2007 SC 1103
- (ii) Narinder Mohan Arya vs. United India Insurance Co. Ltd., (2006) 4 SCC 713
- (iii) Chandrika Prasad vs. Umesh Kumar Verma, (2002) 1 SCC 531

3. Revision u/s 115 CPC not a substantive right: It is well-settled position in law that the right of appeal is a substantive right but there is no substantive right to file revision u/s 115 CPC. See :

- (i) Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).
- (ii) Shiv Shakti Cooperative Housing Society, Nagpur Vs. Swaraj Developers & others, AIR 2003 SC 2434

4.1. Pecuniary Jurisdiction of Civil Court in Uttar Pradesh w.e.f. 05.02.2016: Vide Uttar Pradesh Civil Laws (Amendment) Act, 2015 read with Notification No. 35/IVg-27, Allahabad: Dated 05.2.2016 of the Allahabad High Court, different Sections of the Bengal, Agra and Assam Civil Courts Act, 1887 have been amended by the State Legislature of Uttar Pradesh. After the said amendments, pecuniary jurisdiction of different Civil Courts of the District Judiciary w.e.f. 05.02.2016 for different types of proceedings is as under:

| Sl. No. | Name of Court | Nature of Case | Pecuniary Jurisdiction |
|---------|---|----------------|------------------------|
| 1. | District Judge | Appeal | Twenty Five Lakh |
| 2. | District Judge | Revision | Five Lakh |
| 3. | Civil Judge (Senior Division) | Civil Suit | Unlimited |
| 4. | Civil Judge (Junior Division) – Parent Court having seniority exceeding three years | Civil Suit | Five Lakh |
| 5. | Addl. Civil Judge (Junior Division) | Civil Suit | One Lakh |
| 6. | Judge, Small Causes Court | SCC Suit | One Lakh |
| 7. | Judge, Small Causes Court | Money Suit | Twenty Five Thousand |

4.2. Relevant C.L./Notification of the Allahabad High Court enhancing the appellate jurisdiction of the District Judges: See below:

Allahabad High Court Notification
No. 35/IVg-27, Dated: Allahabad: 05.02.2016

In exercise of the powers conferred by Sub-Section 1(b) of Section 21 of the **Bengal, Agra and Assam Civil Courts Act, 1887** as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 2015 (UP Act No. 14 of 2015), the High Court is pleased to direct that an appeal from a decree or order of a Civil Judge where the value of the original suit in which, or in any proceeding arising out of which the decree or order

was or is made, whether instituted or commenced before or after the date of publication of this notification in Official Gazettee did not or does not exceed twenty five lakhs rupees for purposes of filing appeals shall lie to the District Judges.

By order of the Court,
(Sheo Kumar Singh-I)
Registrar General

ORDER

In pursuance of the provision of sub-section 1(b) of Section 21 of the Bengal, Agra and Assam Civil Courts Act, 1887 as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 2015 (U.P. Act No. 14 of 2015), the High Court is pleased to **transfer all the First Appeals** arising from a decree or order of a Civil Judge, where the value of the Original Suit in which or in any proceeding arising out of the decree or Order was made whether instituted or commenced before or after the date of publication of Notification No. 35/IVg-27 Allahabad, Dated 05.02.2016, in the Official Gazette, did not exceed **twenty five lakhs rupees**, to the respective District Judges having jurisdiction who may either decide it himself or assign it to any Additional Judge subordinate to him.

By order of the Chief Justice
Dated : 09.02.2016

| S. No. | Case Type | File No. | Year | District | Judgment Passed By | Valuation of Appeal | Petitioner | Respondent | Letter No. & Date |
|--------|-----------|----------|------|----------|--------------------|---------------------|--------------------------|----------------------------------|-------------------|
| 1 | CR | 294 | 2014 | Azamgarh | Addl. Civil Judge | 525,000 | Smt. Madhuri Devi & Ors. | Kailash Chand Bamawal and 3 Ors. | 112-9.2.2016 |

List of Civil Cases transmitted to District Courts of Pecuniary jurisdiction up to 25,00,000/- (Twenty Five Lakhs) under the orders of Hon'ble the Chief Justice

| S. No. | Case Type | File No. | Year | District | Judgment Passed By | Valuation of Appeal | Petitioner | Respondent | Letter No. & Date |
|--------|-----------|----------|------|----------|--------------------|---------------------|------------------------|-------------------------|-------------------|
| 1 | CR | 276 | 2012 | Mirzapur | Civil Judge | 1,000,000 | Subham Maini | Anand Kumar & Another | 124-10.2.2016 |
| 2 | CR | 343 | 2011 | Mirzapur | Civil Judge | 700,000 | Narain Singh & Another | Shyam Ji Singh & Others | 121-10.2.2016 |
| 3 | CR | 106 | 2006 | Mirzapur | Civil Judge | 222,000 | Panna Devi | Bhudeo and | 122-10.2.2 |

| | | | | | | | | | |
|---|----|-----|----------|--------------|-------------------------|---------|--------------------------|---|-----------------------|
| | | | | | | | | Others | 016 |
| 4 | CR | 178 | 201 2 | Mirza pur | Addl. Civil Judge | 800,000 | Ravi Kumar Agrawal | Kailash Chandra Agrawal & Others | 123- 10.2.2 016 |

5.1. Revision u/s 115 CPC is not maintainable against an order which is interim in nature or which does not finally decide the lis: Revision u/s 115 CPC is not maintainable against an order which is interim in nature or which does not finally decide the lis. See :

- (i) Gayatri Debi vs. Shashi Pal Singh, 2005 (2) AWC 1072 (SC)
- (ii) Shiv Shakti Coop. Housing Society Nagpur vs. M/s. Swaraj Developers, 2003 (2) ARC 1 (SC)

5.2. Revision u/s 115 CPC against interlocutory order not maintainable : Revision u/s 115 CPC against an interlocutory order is not maintainable. See : **Surya Dev Rai Vs. Ram Chander Rai, AIR 2003 SC 3044**

6. Revisional Court not to pass ad interim injunction u/o 39, Rule 1 & 2 CPC: The power to make interim order is except where it is specifically taken away by the statute implicit in the power to make a final order. It is exercised by the authority who has to make the final order or an authority exercising appellate or revisional jurisdiction against an order granting or refusing an interim order like one u/o 39, rules 1 & 2 CPC. The exercise of the power implies that the authority seized of the proceedings in which such an order is made will eventually pass a final order, the interim order serving only as a step in aid of such final order. The law does not permit the making of an interim order by one authority or court pending adjudication of the dispute by another. See: L.V. Ashok Kumar Lingala vs. State of Karnataka, AIR 2012 SC 53.

7.1. Remedy of writ under Articles 226 & 227 of the Constitution available before High Court against interlocutory order: Amendment by Act No. 46 of 1999 with effect from 1.7.2002 in Section 115 CPC in Uttar Pradesh cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 & 227 of the Constitution. Interlocutory orders passed by the Courts subordinate to the High Court against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge and continue to be subject to certio rari and supervisory jurisdiction of the High Court. See: Surya Dev Rai Vs. Ram Chander Rai & Others, AIR 2003 SC 3044.

7.2. Writ petition under Article 227 against refusal of interim injunction maintainable: A writ petition under Article 227 of the Constitution of India against an order passed by the Civil Court refusing to grant interim injunction under Order 39, Rules 1 & 2 CPC is maintainable. See: State of Jharkhand Vs. Surendra Kumar Srivastava, AIR 2019 SC 231.

8.1. Exercising original powers of trial court by revisional court disapproved by the Supreme Court: Where the Hon'ble Himachal Pradesh High Court had allowed the Criminal Revision by entering into merits (assuming original powers of the trial court) by re-appreciating entire evidence and forming opinion that there was no prima facie case against the accused for framing charge, it has been held by the Hon'ble Supreme Court that the order of the High Court was improper in as much as the High Court in its revisional jurisdiction cannot appraise the evidence. It is the trial court which has to decide whether evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into evidence. It has only to consider whether evidence collected by the prosecution discloses prima facie case against the accused or not. See: Ashish Chadha Vs. Smt. Asha Kumari & another, AIR 2012 SC 431.

8.2. Exercising original powers of lower court by revisional court disapproved by Allahabad High Court: Where in a revision filed before Sessions Judge against rejection of application by Magistrate u/s 156(3) CrPC, the Sessions Judge (by exercising original powers of the Magistrate) himself had directed the police for registration of FIR, it has been held that the Sessions Judge could not have directed the police to register FIR u/s 156(3) CrPC. See :

(i) Hari Prakash kasana vs. State of U.P., 2009 (5) ALJ 750 (All)

(ii) Nawal Kishor Gupta vs. State of U.P. 2010 (5) ALJ 338 (All)

9.1. “Admission” – Meaning of ? : Admission of a case does not amount to a decision on merits. It only means a prima facie case for adjudication is made out. When the court has admitted the proceedings without going into the merits of the case and on question of its maintainability, its only an order in the nature of an interlocutory order i.e. it is not a “case decided”. No rights flow from the order of admission in favour of either of the parties. The question of maintainability of the proceeding (revision, appeal, writ or any other proceedings) may be examined by the

court at any stage subsequent to the order passed regarding admission of the case.
See : Brij Bala vs. Distt. Judge, Kanpur Nagar, 2006 (65) ALR 238 (Allahabad)

9.2. Duty of court while passing order of admission: The court should provide its own grounds and reasons for rejecting the claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be. The requirement of stating reasons for judicial orders necessarily does not mean a very detailed or lengthy order but there should be some reasoning recorded by the court for declining or granting relief to the party. While dealing with the matter at the admission stage, even recording of concise reasons dealing with the merit of the contentions raised before the court may suffice, in contrast a detailed judgment while the matter is being disposed of after final hearing may be more appropriate. But in both events, it is imperative for the court to record its own reasoning however short it may be. See : CCT Vs. Shukla & Brothers, (2010) 4 SCC 875.

9.3. Revision u/s 115 CPC when to be dismissed at the admission stage? : In the present case, the Motor Accident Claim Tribunal, on an application made to it by the claimant, had issued a certificate for the compensation amount to the Collector. The impugned order was passed by the Tribunal in terms of Section 174 of the Motor Vehicles Act, 1988. The Hon'ble Uttarakhand High Court held that there was no good ground to entertain the revision. The learned counsel for the revisionist could not show that the learned Tribunal had not applied its judicial mind while passing the impugned order or the Tribunal had exercised jurisdiction not vested in it by law, or had failed to exercise a jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularities. Hence, the revision was dismissed at the admission stage itself. See: Gurmeet Kaur and Another Versus Amit Kumar, 2022 SCC OnLine Uttarakhand 455.

9.4. Merits not to be discussed when revision is not maintainable: It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the case. See: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.

10.1. Hearing in revision: A revisional court must issue notice to the other side to be heard in the revision u/s 115 CPC. Non issue of notice to other side for hearing is grossly against the settled principles of natural justice. Right of a person to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God “where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat”. See: Suresh Chandra Nanhorya Vs Rajendra Rajak, 2006 (65) ALR 323 (SC).

10.2. Party despite receiving notice of hearing not availing opportunity of being heard cannot take shelter to principles of natural justice: Principles of natural justice regarding opportunity for hearing cannot be put into a strait-jacket formula. If a party after having proper notice chose not to appear, he at a later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The principles of natural justice cannot be stretched too far. See :

(i) N.K. Prasada Vs Govt. of India, (2004) 6 SCC 299 (Three-Judge Bench)

(ii) Sohan Lal Gupta Vs Asha Devi Gupta, (2003) 7 SCC 492.

10.3. Court should lean in favour of hearing of parties: In the matters of civil revisions filed u/s 115 CPC, as far as possible, the court’s discretion should be exercised in favour of hearing and not to shut out hearing. See :

(i) Kashi Nath vs. Board of Revenue, 2001 (19) LCD 1426 (All)

(ii) Ramji Das vs. Mohan Singh, 1978 ARC 496 (SC)

10.4. Dismissal of revision in default: Where the revisionist and his counsel were not present at the time when the revision was called out for hearing and the revision was dismissed in default and the application for restoration of the revision was also dismissed by the revisional court without giving opportunity to the revisionist of being heard, it has been held by the Supreme Court that the revision deserves to be restored and decided on merits. See: Jwala Prasad vs. Ajodhya Prasad, AIR 1983 SC 304.

11.1. Stay order when and how to be passed in revisions? : In the case noted below, the Hon’ble Supreme Court has issued following directions to the

courts while passing orders staying the proceedings pending before the lower court :

- (i). There must be a speaking order while granting stay of the proceedings.
- (ii). Once an stay order is passed, the challenge should be decided within **two to three months** and the matter should be taken up on a day today basis.
- (iii). Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.
- (iv). Stay order shall automatically **lapse after six months** if not extended further and the proceeding before the trial court shall automatically commence.
- (vi) Extension of stay order can be passed only by an speaking order showing extra-ordinary situation.
- (vi). The above directions shall apply to both the civil as well as criminal matters.
- (vii). The above directions shall apply to both civil and criminal appellate and revisional jurisdictions. See: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench).

Note: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench) has now been overruled by a Five-Judge Constitution Bench of the Hon'ble Supreme Court by its judgement dated 29.02.2024 passed in High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

11.2 No automatic expiration of interim stay order after six months: Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an interim stay order would not expire after expiration of six months from the date of passing of the stay order. See: High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

- 11.3. Lower court not to stop its proceedings unless stayed by the superior court: (C.L. No. 6/Admn. 'G' dated 8 February, 1995):** The Hon'ble Chief Justice and Judges of the Allahabad High Court have been pleased to direct that all the Judicial Officers may be advised that mere filing of an appeal, revision or even a writ petition against an order or judgment does not, by itself, constitute any valid or justifiable ground to stay the operation thereof. In other words, unless the implementation of the impugned order or judgment is stayed by the competent court, it must be given effect to and carried out. Disregard of these directions cannot but invite serious adverse note.
- 11.4. Vacation of stay order passed in revision at the end of six months (C.L. No. 40/2006, dated 19.2.2006):** Bemoaning the interminable stay in proceedings to be prominent cause of docket explosion, it has been resolved in the Chief Justices' Conference, 2006 that a mechanism needs to be evolved to contain this menace. It is, therefore, impressed upon all the Judicial Officers to take necessary steps for vacation of stay in proceedings pending before the Trial Court at the end of six months. However the stay in proceedings could be extended on the basis of adequate and special reasons in writing and the same is to be recorded in the concerned file of the case.
- 11.5. Discontinued interim injunction or stay order cannot be continued further:** An interim injunction/stay order when extended to a particular date but not extended further beyond that particular date would be presumed to have ceased from the date of non-extension. See: Ashok Kumar vs. State of Haryana, AIR 2007 SC 1411.
- 11.6. Meaning of "Stay Order" ?:** "While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the

matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.” See: Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association CSI Cinod Seceretary, Madaras, (1992) 3 SCC 1 (Three-Judge Bench) (Para 10)

12. **Infructuous revisions:** Where the revisional court (High Court) u/s 115 CPC had decided the revision against non issue of notice u/s 80 CPC on its merits though the suit was dismissed during the pendency of revision, the Supreme Court held that the revisional court (High Court) committed error in deciding the revision on merits as the same had become infructuous. See: Ram Kumar vs. State of Rajasthan, AIR 2009 SC 4
13. **Extent of powers of revisional court u/s 115 CPC while examining the impugned order :** Where the trial court had dismissed the suit on the ground of non-payment of costs u/s 35-B CPC and on revision being filed by the plaintiff u/s 115 CPC, the High Court as revisional court held that the suit based on the claim of ownership of property by adverse possession was not maintainable, the said order of the High Court passed in revision was set aside by the Hon'ble Supreme Court and the matter was remanded to the High Court for fresh disposal by observing that the High Court as revisional court should have examined the ground of dismissal of suit by the trial court and should not have taken the view that the suit itself was not maintainable before the trial court. A revisional court should examine only the grounds/determination of issues based on which court below had passed the order impugned in revision. See : Jhau Lal Vs. Mohan Lal, (2013) 9 SCC 446.
- 14.1. **Appraisal of evidence in revision:** Revisional court cannot re-appreciate evidence u/s 115 CPC particularly when the lower court has not committed any

jurisdictional error or breach of law in appreciating the evidence on record. Where there is no legal infirmity in the findings of fact recorded by the lower court, the revisional court u/s 115 CPC cannot re-assess the evidence. See :

- (i) Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78 (Five-Judge Bench).
- (ii) Bhanwarlal Dugar vs. Bridhichand Pannalal, 2010 (2) ARC 730 (SC)
- (iii) N. Eswari vs. K. Swaraiya Lakshmi, 2009 (6) Supreme 572
- (iv) P.T. Thomas vs. Thomas Job, 2005(6) SCC 478
- (v) Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003
- (vi) Mudigonda Chandra Mouli Sastry vs. Bhimanepalli Bikshalu, (1999) 7 SCC 66
- (vii) Sri Kempaiah vs. Smt. Chikkaboramma and others, AIR 1998 SC 3335
- (viii) Ram Avtar vs. Ram Dhani, AIR 1997 SC 107
- (ix) Rukmini Amma vs. Kallyani Sulochana, AIR 1993 SC 1616
- (x) Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, AIR 1991 SC 455

14.2. Finding of fact not to be altered u/s 115 CPC: Finding recorded by the Sub-ordinate Judge based on material on record that there was no forgery of the signatures of the party on the compromise petition could not have been interfered with by the Revisional Court/High Court in revision as the Revisional Court can only go into question of jurisdiction. See: Deb Ratan Biswas Vs Most Anand Moyi Devi, 2011 (113) RD 451 (SC)

14.3. Revisional court can interfere with the finding of fact u/s 115 CPC only when the same is perverse & arbitrary: U/s 115 CPC, the revisional court cannot re-appreciate the evidence and cannot set aside the findings of the court below by taking a different view of the evidence. Revisional court u/s 115 CPC cannot exercise its powers as an appellate court to re-appreciate or re-assess evidence for coming to different findings of fact. The revisional court is empowered to interfere with the findings of fact if the findings are perverse or there has been non-appreciation or non-consideration of the material evidence on record by the court below. Simply because another view of the evidence may be taken is no ground for the revisional court to interfere in its revisional jurisdiction. See :

- (i) Kasthuri Radhakrishnan Vs. M. Chinniyan, AIR 2016 SC 609.
- (ii) S.F. Engineer Vs. Metal Box India Ltd., (2014) 6 SCC 780
- (iii) Masjid Kacha Tank, Nahan vs. Tuffail Mohammed, AIR 1991 SC 455

14.4. Evidence not to be appreciated by revisional court merely because another view is possible : Simply because another view of the evidence laid before

the lower court may be taken, is no ground for the revisional court u/s 115 CPC to interfere with the findings of facts recorded by the lower court. See: Masjid Kacha Tank Nahan vs. Tuffail Mohammed, AIR 1991 SC 455.

14.5. Summary of law regarding interference by the revisional court with the evidence and findings of fact recorded by the lower Court:

From the decisions of the Hon'ble Supreme Court discussed at various sub-heads noted above, the scope for interference by the revisional court with the findings of fact recorded by the lower Court may be summarized as under :

- (i) findings of fact recorded by lower court on an evidence not available on record.
- (ii) material evidence, which could have reflected on the merits and the decision of the case, has been ignored by the lower Court.
- (iii) finding of fact recorded on an evidence not admissible.
- (iv) material evidence discarded by treating it as inadmissible.
- (v) finding of fact being perverse in terms of law.
- (vi) but while disturbing the findings of fact recorded by the lower Court, the revisional court would not proceed to appreciate or re-appreciate the evidence itself. The revisional court would only make its observations on the illegality committed by the lower court in appreciating the evidence and recording findings of fact and by setting right the mistakes of law committed by the lower court, would set aside the findings and the order of the lower court by directing it to re-appreciate the evidence, record fresh findings of fact as per law by keeping in view the observations made by the revisional court and pass fresh orders.

15. Revisional order must be speaking : A revisional order or any other judicial or quasi-judicial order must be reasoned and speaking. See : -

- (i) State of Rajasthan vs. Rohitas, 2008 (61) ACC 678(SC)
- (ii) M.M. RDA, officer's Association vs. Mumbai RDA, 2005 (1) SCJ 126
- (iii) Chandrika Prasad Yadav vs. State of Bihar, (2004) 6 SCC 331
- (iv) Cyril Lasrado vs. Juliana Maria Lasrado, (2004) 7 SCC 431
- (v) Chairman, & M.D., UCO Bank vs. P.C. Kakkar, (2003) 4 SCC 364
- (vi) Raj Kishore Jha vs. State of Bihar, 2003(47) ACC 1068(SC)
- (vii) Kaushalya Devi Vohra vs. Mohinder Lal Gupta, (2000) 9 SCC 417

(viii) Harbans Sharma vs. Smt. Pritam Kaur, (1982) 3 SCC 386

16. Second revision: A second revision against the same order is not maintainable u/s. 115 CPC. See :

- (i) Rukmini Amma vs. Kallyani Sulochana, AIR 1993 SC 1616
- (ii) Aundal Ammal vs. Sadasivan Pillai, AIR 1987 SC 203

17.1. Time barred revisions & condonation of delay: According to Article 131 of the Limitation Act, 1963, limitation period for preferring a revision u/s 115 CPC is **90 days** from the date of order under challenge or from the date of knowledge of the order by the revisionist. Section 5 of the Limitation Act applies to civil revisions also and if the delay is satisfactorily explained, the same may be condoned by the revisional court. While considering the question of condonation of delay u/s 5 of the Limitation Act, 1963, the court should not adopt a pedantic or hyper technical approach. The Court should rather adopt liberal approach. Substantive justice should be preferred over technical justice. A party seeking condonation of delay should not be required to explain the delay for every day because if the delay for every day is asked to be explained then why not the delay for every hour, every minute and every second. See :

- (i) Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)
- (ii) State of Nagaland vs Lipok AO, 2005 (52) ACC 788 (SC)
- (iii) Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222
- (iv) State of Haryana vs. Chandra Mani, 1996 (3) SCC 132
- (v) Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750
- (vi) G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897
- (vii) Collector L.A. Anentnag vs. Smt. Katiji, AIR 1987 SC 1353
- (viii) O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66

17.2. Revision u/s 115 CPC not to lie against dismissal of application u/s 5 for condonation of delay to file appeal against ex-parte decree passed u/o 9, Rule 13 CPCs: Relying upon the Supreme Court decisions reported in (i) Shyam Sundar Sarma Vs. Pannalal Jaiswal, AIR 2005 SC 226 (ii) Sheodan Singh Vs. Daryao Kunwar, AIR 1966 SC 1332 and (iii) Ratan Singh Vs. Bijoy Singh & Others, AIR 2001 SC 279, it has been held by the Division Bench of the Calcutta High Court that "Order of dismissal of proceedings u/o 9, Rule 13 CPC is appealable u/o 43 of the CPC, therefore, application for dismissal of application u/s 5 of **the Limitation Act, 1963** in connection thereto will obviously be appealable but order

of dismissal of application u/s 5 simpliciter is of no effect. Order dismissing application for condonation of delay under Section 5 is an appealable order. Revisional proceedings u/s 115 CPC or under any provisions of law would not lie against such order. See : **Md. Ali Sardar Vs. Hossain Ali Mondal, AIR 2012 Calcutta 171 (D.B.)**

18.1. Conversion of revision into appeal : It is open to a court to convert an appeal into a revision and a revision into an appeal. In case, on technical ground, the appeal is not maintainable, in that event, it can be treated to be a revision. See: Ram Kumar Agarwal vs. District Judge, Mainpuri, 1999 (37) ALR 493 (All)

18.2. Conversion of appeal into revision & vice-versa: Court has discretionary power to convert an appeal into revision u/s 115 CPC when the court whose order is appealed against has illegally exercised its jurisdiction. See :

(i) Bar Council of India vs. Manikant Tewari, AIR 1983 All. 357 (DB)

(ii) B.P. Gautam vs. Dr. R.K. Agarwal, AIR 1977 All. 103(FB)

(iii) The Reliable Water Supply Service of India vs. Union of India, (1972) 4 SCC 168

18.3. Revision not to lie u/s 115(2) CPC where order (decree) is appealable:

Where a suit was dismissed on the ground of res judicata conclusively determining the rights of parties with regard to one of the matters viz. res judicata, it has been held by the Supreme court that such an order amounts to decree as defined u/s 2(2) CPC and the same being appealable u/s 96 r/w Order 41, rule 1 CPC, revision does not lie u/s 115(2) CPC against such order (decree). See: Rishabh Chand Jain Vs. Ginesh Chandra Jain, AIR 2016 SC 2143.

19.1. Production of evidence in revision: If no attempt was made to produce a document/evidence in lower court, the same cannot be permitted to be produced in revisional court u/s 115 CPC. See :

(i) Lekh Raj vs. Muni Lal, AIR 2001 SC 996.

(ii) Km. Rakhi vs. Ist ADJ, Firozabad, AIR 2000 All 166

19.2. Revision u/s 115 CPC against admitting documents after arguments were over not maintainable: Revision u/s 115 CPC against admitting documents

after arguments were over is not maintainable. See: Hemendra Chaudhary Vs. Punjab National Bank, AIR 1993 All 49.

20.1. Revision against issue of notice u/o 39, rule 3 CPC: Revision u/s 115

CPC against issue of notice by court u/o 39, rule 3 CPC is not maintainable.

See :

- (i) Ram Dhani Vs Raja Ram, 2011 (113) RD 657 (All-DB)
- (ii) Lucknow Diocesan Trust Assn. vs. Sri B.C. Jain & others, 2006 (1) ARC 153 (All)
- (iii) Col. Anil Kak (Retd.) vs. Municipal Corp., Indore, 2006 (1) ARC 39 (SC)
- (iv) Bhagwati Pd. Lohar vs. State of U.P., 2005 (99) RD 333 (All)
- (v) Gayatri Devi vs. Shashi Pal Singh, 2005 (1) SCJ 637
- (vi) Yashwant Sakhalkar vs. Hirabat Kamat Mhamai, (2004)6 SCC 71
- (vii) Suryadeo Rai vs. Ram Chander Rai, (2003) 6 SCC 675
- (viii) Rajendra Singh vs. Sri Brij Mohan Agarwal, 2003(1) ARC 270 (All)
- (ix) Shiv Shakti Co-operative Housing Society vs. Swaraj Developers, (2003) 6 SCC 659
- (x) Ravinder Kaur vs. Ashok Kumar, (2003) 8 SCC 289
- (xi) United India Insurance Co. Ltd. vs. Rajendra Singh, AIR 2000 SC 1165
- (xii) Rajbir Singh vs. VII ADJ, Muzaffarnagar, 1998 RD 483 (All)
- (xiii) S.P. Chengal Varaya Naidu vs. Jagannath, AIR 1994 SC 853

Note: In compliance with the order of Hon'ble Allahabad High Court passed in writ petition no. 802 (M/s) of 2007, Lalit Mohan Srivastava vs. Distt. Judge, Ambedkar Nagar & others, C.L. No. 18/2007, dated 11.5.2007 and the C.L. No. 15/Admin 'G' 2006, dated 3.5.2006 in compliance with the directions issued in the case of Bhagwati Pd. Lohar vs. State of U.P., 2005 (99) RD 333 (All) circulated amongst the judicial officers of the State of U.P. directs that revision u/s. 115 CPC against issue of notice u/o 39, rule 1, 2, 3 CPC being interlocutory is not maintainable.

20.2. Appeal not maintainable against an interlocutory order of injunction

passed by appellate court u/o 43, rule 1(r) of CPC: Since there is no express provision for an appeal from an interlocutory appellate order upon the appellate court exercising the power u/s 107(2) CPC, whether or not read with Section 108 CPC, the interlocutory order of injunction passed by the appellate court would not be appealable order. No appeal is maintainable against interlocutory order of injunction passed by appellate court whether u/o 43, rule 1(r) CPC or otherwise. But petition under Article 227 of the Constitution would be obviously maintainable. See : Sabyasachi Chatterjee Vs Prasad Chatterjee, AIR 2013 Calcutta 231 (Full Bench).

21. Revision not maintainable against grant of amendment application

u/o 6, rule 17 CPC: Revision u/s 115 CPC is not maintainable when an amendment application has been allowed by the court u/o 6, rule 17 CPC.

Order allowing amendment would not even remotely cause failure of justice or irreparable injury to any party as the respondent would get opportunity to file a written statement and he would be able to raise all his defence and he would also have a chance to take up points decided against him before the appellate court. See : Prem Bakshi & others vs. Dharam Dev & others, AIR 2002 SC 559.

22. Revision maintainable against rejection of application u/o 6, rule 17

CPC: Revision against an order rejecting amendment application u/o 6, rule 17

CPC is maintainable. See :

- (i) Suresh Kumar Yadav Vs. Prashant Arora, 2012 (116) RD 275 (All)
- (ii) Vishwanath Mehrotra vs. High Court of Judicature at Allahabad, 2010 (3) ARC 73 (All)
- (iii) Mukhtar Ahmad vs. Sirajul Haq, 2006 (63) ALR 718 (All)

23.1. Revision against impleadment: Revision u/s 115 CPC against impleadment of party is maintainable. See: K.S.M. Basheer Mohammad vs. Ram Bali Singh 2001(3) AWC 2429 (All) (LB)

23.2. Revision against order rejecting transposition u/o 1, rule 10 CPC:

An order disposing of an application u/o 1, rule 10 CPC amounts to a “case decided” and revision against such order is maintainable. Revision is also maintainable u/s 115 CPC against an order disposing of transposition application. See :

- (i) Patel Dineshbhai Mohanbhai vs. Naranbhai Ramdas, AIR 2005 Guj 100
- (ii) Bhagwan Prasad vs. Mata Prasad, 1977 ALJ 894 (All)
- (iii) Razia Begum vs. Sahebzadi, AIR 1958 (SC) 886

24. Revision against disposal of Commissioner’s report Rejection of application for issue of commission: Revision u/s. 115 CPC does not lie against rejection of an application for issue of commission. A trial court or appellate court is vested with the discretion u/o. 26, R. 9 CPC to issue or not to issue a commission for local investigation and no party to the suit can claim as of right to get a commission issued for the purpose of local investigation. However exercise of such discretion by court should be judicial and not arbitrary. See :

- (i) Javed Ali Vs. Ahmed Urooz, 2014 (102) ALR 105 (All)
- (ii) Ram Ishwar vs. Laxmi Narain, 2007 (66) ALR 195 (All)
- (iii) M/s. Kisanotthan Co-operative Housing Society, Lucknow vs. O.P. Srivastava, 2007 (25) LCD 919 (All—L.B.)
- (iv) Lekh Raj vs. Muni Lal, AIR 2001 SC 996
- (v) Dr. K.C. Tandon vs. IXth Addl. District Judge, 1998(33) ALR 267 (All)

25. Rejection of report of Amin: Revision against order rejecting report of Amin is not maintainable. See: Satyendra Prasad Jain vs. State of U.P., AIR 1996 All. 77.

26. Revision against insufficiency of court fee: Revision by defendant does not lie u/s 115 CPC on a question of insufficiency of court fee where no question of jurisdiction is involved. Defendant has no legal right to challenge insufficiency of court fee. See :

- (i) Siddhartha Gautam Ram vs. Sarveshwari Samooh Kustha Sewashram, Rajghat, AIR 1995 All 52
- (ii) Shamsher Singh vs. Rajinder Prasad & others, AIR 1973 SC 2384
- (iii) Sri Rathnavarmaraja vs. Smt. Vimla, AIR 1961 SC 1299

Note: In the case of Ram Krishna Dhandhanian vs. Civil Judge (SD), Kanpur Nagar, 2005 (2) ARC 531 (All—D.B.), the Allahabad High Court, interpreting the provisions of Sec. 12 of the Court Fee Act, 1870 (as amended, updated and applied in the State of U.P.), Sec. 149 CPC r/w Order VII, r. 11 CPC, has held that the defendant has a right to raise all objections on the valuation and deficiency of the Court fees. The matter is to be adjudicated upon and decided by the Court u/s. 12 of the Court Fee Act, 1870 and the decision so taken by the trial Court shall be final. The defendant cannot raise the grievance against the said decision unless the valuation suggested by him affects the jurisdiction of the Court. However, the appellate or revisional Court always can test the issue suo motu and make the deficiency good as the purpose of the Act is not only fixing the pecuniary jurisdiction of the Court but also creating revenue for the State. Similarly, in the case of Arun Kumar Tiwari vs. Smt. Deepa Sharma, 2006 (1) ARC 717 (All—D.B.), interpreting the provisions of Sec. 34 and 37 of the Specific Relief Act, 1963, Sec. 6-A (2) of the Court Fee Act, 1870 and Order 39, r. 1 & 2 CPC, a Division Bench of the Allahabad High Court has held that when there is challenge to jurisdiction, valuation, sufficiency of Court fee or

maintainability of suit, the Court is to first decide these issues and then to decide injunction application and other matters.

- 27. Revision u/s 115 CPC against an order directing payment of court fee not maintainable:** Since statutory remedy to file an appeal u/s 104 CPC is available against an order directing to make good deficiency in court-fee, therefore, revision u/s 115 CPC against such order is not maintainable. See : Smt. SatyaDevi vs. Smt. Janak, AIR 2012 (NOC) 50 (Uttaranchal High Court).
- 28. Revision maintainable against refusal of leave u/s 80(2) CPC to file suit:** Revision against an order passed u/s 80(2) CPC refusing permission to file suit is maintainable. See: M/s. Bajaj Hindustan Sugar & Industries Ltd. vs. Balrampur Chini Mill Ltd., AIR 2007 SC 1906.
- 29. Revision not maintainable against an order passed u/o 21, rule 97 to 103 CPC:** Revision u/s 115 CPC does not lie against an order passed by executing court u/o 21, rule 97 to 103 CPC as such an order amounts to a decree and only appeal lies against such order. See: S. Rajeswari vs. S.N. Kulasekaran, (2006) 4 SCC 412.
- 30. Fresh Vakalatnama can be required in revision:** In the case of Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006(1) ARC 1(Supreme Court) (Three-Judge Bench), the Supreme Court, expressing concern in regard to the manner in which defective vakalatnamas are routinely filed in courts, has clarified the necessity of filing fresh vakalatnamas at different stages of proceedings like original suits, appeals, revisions, executions and misc. proceedings and also the manner of filing the vakalatnamas. The Supreme Court has ruled that: “Vakalatnama, a species of Power of Attorney, is an important document, which enables and authorizes the pleader appearing for a litigant to do several acts as an agent which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of the authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled, attested, and accepted with care and caution.

Obtaining the signature of the litigant on blank vakalatnamas and filling them subsequently should be avoided. The Supreme Court took judicial notice of the following defects routinely found in vakalatnamas filed in courts :

- (1) Failure to mention the name/s designation or authority of the person executing the vakalatnama and leaving the relevant column blank.
- (2) Failure to disclose the name, designation or authority of the person executing the vakalatnama on behalf of the grantor (where the vakalatnama is signed on behalf of a company, society or body) either by affixing a seal or by mentioning the name and designation below the signature of the executants (and failure to annex a copy of such authority with the vakalatnama).
- (3) Failure on the part of the pleader in whose favour the vakalatnama is executed to sign it in token of its acceptance.
- (4) Failure to identify the person executing the vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the vakalatnama.
- (5) Failure to mention the address of the pleader for purpose of service (particularly in cases of outstation counsel).
- (6) Where the vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the vakalatnama without any endorsement/statement that the signature is for self and as guardian of his minor children. Similarly, where a firm or its partner, or a company and its Director, or a Trust and its trustee, or an organization and its office bearer execute a vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both in his/her personal capacity and as the person authorized to sign on behalf of the corporate body/firm/society/organization.
- (7) Where the vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an attorney holder and failure to annex a copy of the power of attorney.
- (8) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets as many a times it is not possible to know who have signed the vakalatnama where the signature are illegible scrawls.
- (9) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for filing an appeal or revision. It is not uncommon in some areas for a mofussil lawyer to obtain signature of a litigant on a vakalatnama and come to

the seat of the High Court and engage a pleader for appearance in a High Court and execute a vakalatnama in favour of such pleader.

- (10) The abovenoted routine defects are found as registries/offices do not verify the vakalatnamas with due care and caution they deserve, such failure many a time leads to avoidable complications at later stages. The need to issue appropriate instructions to the registries/offices to properly check and verify the vakalatnamas filed requires emphasis.
- (11) Filing a fresh vakalatnama with the memorandum of appeal etc. will always be convenient to facilitate the processing of the appeal by the office.

31. Revision against enlargement of time u/s 148 CPC: An order passed u/s 148 CPC enlarging time for making any payment (or doing any act under CPC) cannot be interfered with in revision u/s 115 CPC. See :

- (i) Johri Singh vs. Sukh Pal Singh, AIR 1989 SC 2073
- (ii) Also see for powers of court u/s. 148 CPC: Salem Advocates Bar Association vs. Union of India, 2005 (3) AWC 2996 (SC)

32.1. Revision maintainable against an order passed u/s 151 CPC: Revision is maintainable u/s 115 CPC against an order passed u/s 151 CPC as such order is not appealable. See : Shipping Corpn. of India Ltd. Vs. Machado Brothers, AIR 2004 SC 2093.

32.2. Revision u/s 115 CPC not to lie against discretionary orders: When an order has been passed by the lower court in its discretionary powers and such discretion has not been exercised erroneously or with any irregularity, the same cannot be interfered with by the revisional court u/s 115 CPC. See : Southern Sales & Services & others Vs. Sauermilch Design and Handles GmbH, AIR 2009 SC 320.

33.1. SCC revisions u/s 25 of the PSCC Act, 1887: Appraisal of Evidence & Recording of Finding of Facts : A revisional court u/s 25 of the PSCC Act, 1887 cannot re-assess the evidence and record fresh finding of facts. See :

- (i) Hari Gopal vs. Vijay Kumar, 2007 (66) ALR 694 (All)
- (ii) Smt. Mundri Lal vs. Smt. Sushila Rani, 2007 (69) ALR 477 (SC)
- (iii) Ram Karan Gupta vs. III ADJ, Moradabad, 2006 (63) ALR 758 (All)
- (iv) Smt. Urmilesh Kumari vs. Nagendra Kr. Shukla, 2006 (65) ALR 525 (All)
- (v) Raja Ram Sharma vs. X ADJ, 2006 (64) ALR 355 (All)
- (vi) Bimal Kishore Paliwal vs. IV ADJ, Muzaffarnagar, 2005 (2) ARC 672 (All)
- (vii) Chhote Lal vs. II ADJ, Jhansi, 2005 (4) AWC 3718 (All)
- (viii) Laxmi Kishore vs. Har Prasad Shukla, 1981 ACR 545 (All.—D.B.)
- (ix) Smt. Anjali Awasthi vs. Mohammad Shafique, 2006 (65) ALR 204 (All)

Note: In the case of Smt. Anjali Awasthi, the question of issue of notice u/s. 106 TP Act was involved and the High Court, by recording severe **strictures** against the ADJ, Kanpur Nagar/AJSCC directed the copy of the judgment to be placed on his personal service record.

33.2. Power of District Court u/s 25 PSCC Act, 1987 and Sec 115 CPC compared :

A District Court while acting as revisional court can exercise wider powers u/s 25 of the PSCC Act, 1987 than u/s 115 CPC. In a SCC revision, the District Judge is fully justified in interfering with a finding of fact arrived at by the trial court which had over looked the weighty relevant material available on record. See: Shyam Lal vs. Rasool Ahmed, (2002) 9 SCC 499

33.3. Dismissal of in Default: SCC revision u/s 25 of the PSCC Act cannot be dismissed in default. The revisional court u/s 25 of the PSCC Act has to examine the judgment of the trial court in accordance with that section and decide the revision on merits. See: Chhotey alias Chhota vs. Gulzarilal, 1982 (2) ARC 203 (All)

33.4. Production of additional evidence in SCC revision : A revisional court u/s 25 of the PSCC Act, 1887 can permit and admit additional evidence/document in revision if the same is necessary and relevant for doing justice between the parties. See :

- (i) Smt. Amarawati vs. XI ADJ, Moradabad, 2005 (4) AWC 3143 (All)
- (ii) Babu Ram vs. ADJ, Dehradun, 1983 ARC 15 (Allahabad—D.B.)

33.5. Remand order in SCC Revision: A revisional court u/s 25 of the PSCC Act, 1887 cannot re-assess the evidence itself. A revisional court is entitled to see only illegality or otherwise of the findings recorded by the lower court. But in case revisional court finds re-assessment of evidence necessary, it can remand the case for re-assessment of evidence to the SCC Court. See :

- (i) Mukesh Kumar v. XI ADJ, Bulandshahar, 2006 (65) ALR 689 (All)
- (ii) Smt. Krishna Debi vs. IV ADJ, Saharanpur & others, 1994 (2) ARC 248 (All)
- (iii) Islamuddin vs. Judge, SCC, Bulandshahar, 1986 ALJ 495 (All)
- (iv) Jagdish Prasad vs. Smt. Angoori Devi, (1984) 1 ARC 679 (SC)
- (v) Janardan Pandey vs. Ist ADJ, Nainital, (1983) 1 ARC 640 (All)

- 34. Rewriting overruled judgment amounts to judicial indiscipline:** If a judgment is overruled by the higher court, the judicial discipline (on remand) requires that the Judge whose judgment is overruled must submit to the judgment (of the higher court). He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See :
- (i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 (*para 31*)
 - (ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 (*para 28*)
- 35. Order of lower authority merges into that of the superior authority:** A judicial order passed by the trial court merges in the order passed by the appellate or revisional court. It cannot be said that an appellate or revisional decision in which the decision of the trial court has merged is still a case arising out of the original suit. After merger, the decision arising out of the original suit vanishes. See: Jaswant Singh Vs. Smt. Kusum Lata Devi, 2012 (116) RD 383 (All)(LB).
- 36. Revision not maintainable against an order u/s 30(1) of Act No. 13/1972:** Revision u/s 115 CPC against an order u/s 30(1) of Act No. 13 of 1972 permitting deposit of rent in court is not maintainable. See :
- (i) Rajendra Kr. Karanwal vs. Smt. Kamlesh Garg, 2005 (4) AWC 3858 (All)
 - (ii) Anwar Ali vs. ADJ, Moradabad, 2002 (5) AWC 4094 (All)
- 37. Revision against award of Lok-Adalat:**Revision u/s 115 CPC does not lie against an award passed by Lok-Adalat u/s 21 of the Legal Services Authority Act, 1987. The award can also not be challenged in appeal u/s 96 CPC and under Article 226 of the Constitution. See: P.T. Thomas vs. Thomas Job, (2005) 6 SCC 478
- 38. Revision maintainable against grant of interim maintenance u/s 24 of the Hindu Marriages Act, 1955:** Revision under 115 CPC against an order passed by Civil Judge (Senior Division) u/s 24 of the Hindu Marriages Act, 1955 granting interim maintenance is maintainable as such interim order disposes of final issue of interim maintenance to spouse during pendency of proceedings. See: Smt. Pushpa @ Pooja vs. State of U.P., AIR 2005 All 187

39. Revisions u/s 12-C (6) of U.P. Panchayat Raj Act, 1947: An order passed by prescribed authority/SDO directing inspection and re-counting of ballot papers is only interlocutory order. Revision u/s 12-C (6) of U.P. Panchayat Raj Act, 1947 against such an interlocutory order is not maintainable. Revision lies only against final order disposing of the election petition. See:

- (i) Mohd. Mustafa vs. Upziladhikari, AIR 2007 (NOC) 2609 (All—D.B.)
- (ii) Amarish vs. SDO, Meerut, 2006 राजस्व निर्णय संग्रह 621 (All)
- (iii) Anand vs. Upziladhikari, Meerut, 2006 राजस्व निर्णय संग्रह 624 (All)
- (iv) Nihal Ahmad vs. District Judge, Siddharth Nagar, 2004 (97) RD 525 (All—D.B.)
- (v) Smt. Shahbaz Bano vs. Smt. Shahiba Bano, 2004 (96) RD 166 (All)
- (vi) Dulhey Khan vs. District Judge, Badaun, 1997 (88) RD 17 (All)
- (vii) Ram Adhar Singh vs. District Judge, Ghazipur, 1986 UPLBEC 817 (All—F.B.)
- (viii) Kedar Singh vs. District Judge, Agra, 1983 ALJ 1183 (All)

40. Revision against order refusing permission to institute suit u/s 92 CPC: Revision u/s 115 CPC is maintainable against an order refusing leave to institute suit u/s 92 CPC in relation to a public trust. See :

- (i) Baba Bhoot Nath Dharmarth Nyas vs. Tajander Singh, AIR 2003 All 160 (L.B.)
- (ii) Prabhu Dayal Tewari vs. Lakhan Singh, AIR 2001 All 60

41. Revision not maintainable against an order refusing permission to cross-examine deponent of affidavit: Revision does not lie u/s 115 CPC against an order rejecting application seeking cross-examination of deponent of affidavit u/o 19, rule 2 CPC as such an order does not amount to a case decided. See :

- (i) S.D. Jain vs. Rakesh Jain, AIR 1986 All 30
- (ii) Kailash Singh vs. Agarwal Export Corpn., 1984 ALJ 30 (All)

42. Revision maintainable against an order staying suit u/s 10 CPC: Revision u/s 115 CPC is maintainable against an order passed u/s 10 CPC staying or refusing to stay the proceedings of a suit as such an order amounts to a “case decided”. See: AIR 1975 P & H 171

43. Revision not maintainable against an order permitting production of additional evidence: Revision u/s 115 CPC is not maintainable against an order granting permission to produce additional evidence as the opposite party can take appropriate pleas in appeal if the decree goes against it. See: Punjab National Bank, Rajpura Township vs. Amrit Industries, (2000) 10 SCC 38.

- 44. Revision not maintainable against order setting aside ex-parte decree u/o 9, rule 13 CPC:** An order setting aside ex-parte decree u/o 9, rule 13 CPC does not decide the suit finally and does not occasion failure of justice. Entertaining and allowing revision u/s 115 CPC against such an order is wholly illegal and without jurisdiction. See : Ambika Chaudhary vs. District Judge Ballia, 2004 (54) ALR 83 (All)
- 45. Revision not maintainable against an order of restoration of suit not to be allowed:** Where the suit was restored on imposition of cost but the High Court in revision u/s 115 CPC set aside the restoration order, it has been held by the Supreme Court that the High Court ought not to have interfered with the order of the trial court allowing the application for the restoration. See: Shyamal Ghosh vs. Anupama Ghosh, 2010 (2) ARC 793 (SC).
- 46.1. Revision against order rejecting plaint u/o 7, rule 11 CPC:** Order of rejection of plaint u/o 7, rule 11 CPC is decree within the meaning of Sec 2(2) CPC and only appeal would lie against such order. Revision against order rejecting plaint is not maintainable. See :
- (i) Kartar Singh vs. Smt. Shanti, AIR 2004 NOC 318 (Delhi)
 - (ii) Mable vs. Dolores, AIR 2001 Kerala 353 (D.B.)
- 46.2. Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC :** Proper remedy against an order rejecting plaint under Order 7, rule 11 CPC is first appeal u/s 96 CPC. Writ petition under Article 227 of the Constitution against order rejecting plaint is not maintainable. See: Sayyed Ayaz Ali Versus Prakash G. Goyal and Others, (2021) 7 SCC 456.
- 46.3. Plaint should not be rejected under Order 7, Rule 11 CPC on the ground of limitation if the same is connected with the merit of the case:** Application of the defendant moved under Order 7, Rule 11 CPC for rejection of plaint on the ground of limitation was rejected by the Civil Judge (Senior Division), Dehradun. Order of the Civil Judge was challenged by the defendant before the Uttarakhand High Court. Dismissing the revision at the admission stage itself, the Hon'ble Uttarakhand High Court held that if the question of limitation is

connected with the merit of the claim, such issue is to be tried along with other issues. A plaint cannot be rejected on the ground of limitation especially when it is a mixed question of fact and law and where there is no clear or specific admission in the plaint suggesting that the suit is barred by limitation. The learned counsel for the revisionist could not show that the learned Trial Court did not apply its judicial mind while passing the impugned order or the learned Trial Court had exercised jurisdiction not vested in it by law, or had failed to exercise a jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. Therefore, the revision was dismissed at the admission stage. See: Sunil Kumar Mittal Versus Madhu Garg and Others, 2022 SCC OnLine Uttarakhand 234.

47. Revision not maintainable against an order refusing to decide preliminary issue first u/o 14, rule 2(2) CPC: An order refusing to decide a preliminary issue like limitation first u/o 14, rule 2(2) CPC is discretionary. Revision u/s 115 CPC against such an order is not maintainable. See: Sidh Nath vs. District Judge, Mirzapur, AIR 2002 All 356

48. Revision not maintainable against an order refusing to recall witness: Revision u/s 115 CPC is not maintainable against an order passed by court to recall a witness u/o 18, rule 17-A CPC (now deleted wef 01.07.2002) for further examination. See: Sunder Theatres vs. Allahabad Bank, Jhansi, AIR 1999 All 14.

Note: Vide Salem Advocates' Bar Association vs. Union of India, (2005) 6 SCC 344 (Three Judge Bench), despite deletion of O. 18, r. 17-A CPC w.e.f. 1.7.2002 court's inherent power still exists to grant permission to the parties to lead their evidence which could not have been led due to lack of knowledge or despite due diligence.

49. Revision maintainable against mode of execution of decree: Civil revision u/s 115 CPC is maintainable against an order passed by the executing court finally deciding the manner in which the decree is to be satisfied. See: Radhey Shyam Gupta vs. Punjab National Bank, AIR 2009 SC 930

50. Revision questioning jurisdiction maintainable: Revision questioning jurisdiction of lower court is maintainable. See :

(i)Wada Arun Asbestos (P) Ltd. vs. Gujarat Water Supply & Sewerage Board,
AIR 2009 SC 1027

(ii)Radha Charan Das vs. Th. Mohini Beharaji Maharaj, AIR 1975 All 368

51. Order rejecting application for permission to sue in representative capacity is revisable u/s 115 CPC: Order rejecting application for permission to sue in representative capacity is revisable u/s 115 CPC. See :
Nakuleswar Paul vs. State of Tripura, AIR 2005 Gauhati 54.

52. Jurisdiction of Sec 34 of the Arbitration and Conciliation Act, 1996 cannot be assimilated with the revisional jurisdiction u/s 115 CPC: To assimilate the jurisdiction of Section 34 of the Arbitration and Conciliation Act, 1996 with the revisional jurisdiction of civil court under Section 115 CPC is fallacious. Section 115 CPC expressly sets out three grounds on which a revision may be entertained and then states that the High Court may make “such order as it thinks fit”. These latter words are missing in Section 34 of the above Act. Jurisdiction of Sec 34 of the said Act therefore cannot be assimilated with the revisional jurisdiction u/s 115 CPC. See: Project Director, National Highways No. 45 E And 220 National Highways Authority of India Versus M. Hakeem And Another, (2021) 9 SCC1.
