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# Case Commentary on Hari Shankar V. Rao Girdhari Lal Chowdhury (AIR 1963 SC 698)

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GADKARI SHARVARI NIHAL<sup>1</sup>

## ABSTRACT

*The case comment discusses the judgement given in the case of Hari Shankar v. Rao Girdhari Lal Chowdhury and further analyses Section 115 of Code of Civil Procedure mainly stating about the inaccuracy in the High Court's revision and also deliberates upon which powers are conferred upon the Court under revisionary jurisdiction by evaluating the Supreme Court's decision in the present case. Moreover, the piece recognises the latest position of law by examining Law Commission's Reports. Lastly, the case comment provides suggestions in regard to the provision of revision for the betterment and efficient functioning of the judicial system.*

**Keywords:** *Revision, Appeal, Remedy, Evidence, Justice.*

## I. FACTS

The appellants appealed in the Apex Court of India for the eviction of the respondent as they sub-let the bungalow without the consent of the landlord after the commencement of the Delhi and Ajmer Rent Control Act, 1952 (38 of 1952). The Trial Court had held that the bungalow was sub-let after the commencement of the Act and the same was confirmed by the Additional District Judge. When the Case was taken to the High Court for revision under S.115 of CPC, it re-considered the evidences of the case and gave a decision contrary to that of the previous two courts. Discontented with the revision, an appeal was filed in the Supreme Court (though second appeal was not allowed in accordance with the Delhi and Ajmer Rent Control Act).

## II. ISSUES

- Whether the High Court in the exercise of its revisional power is entitled to re-assess the value of the evidence and to substitute its own conclusions of fact in place of those reached by the Court below.
- Whether the appeal would succeed in the Apex Court.

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### III. RULES

- Section 35 of Delhi and Ajmer Rent Control Act, 1952.
- Section 115 of Code of Civil Procedure, 1908.
- Article 136 of Constitution of India.

### IV. JUDGEMENT

The Supreme Court allowed the appeal with costs. The order given by the Additional District Judge was reinstated and the order under appeal was set aside. The respondent was directed to vacate the premises and had given an undertaking for the same. Furthermore, the Apex Court also stated that under S. 115 of CPC the High Court shall not interfere in the previous Court's decision but keep a check if there has been no miscarriage of justice and that the decision made was 'according to law'. S.35(1) of the Delhi and Ajmer Rent Control Act is not to be interpreted narrowly but not so broadly either to alter a revision into an appeal of facts.

### V. ANALYSIS

Under Section 115 of CPC, provision for revision by High Court has been provided. Any aggrieved party can file a request for revision after the case has been settled, as long as the case is not currently under appeal. If a proper cause is found, such as extrajudicial conduct or an unlawful and inaccurate procedure used by the subordinate court, the High Court may decide to revise the case.

The Supreme Court in the present case distinguished between an appeal and revision stating that under S.115 of CPC, the High Court has limited power and the right is merely confined to jurisdiction. The aim is to check that there has been no miscarriage of justice. The HC has to ensure the decision made by the subordinate court was according to the law and not try and delve into the facts/evidences of the case unless it is downright important

The intention behind S.115 of the Code was not to provide the High Courts with the power to alter the order pass by the lower court, interfere and change the gross misconduct in the decision given by the subordinate court as no justification can be found otherwise.

It was propounded in the case of *Panduranga Mandlik v. Maruti Ghatge*<sup>2</sup> that the High Court under S 115 is not supposed to correct the mistake of fact or even errors of law unless it has nexus with the jurisdiction of the subordinate court. Hence, the question of Jurisdiction is a must in order to interfere with the decision of that of a lower court under S. 115. Furthermore,

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<sup>2</sup> Panduranga Mandlik v. Maruti Ghatge, AIR 1989 SC 2240.

it was stated in the case of *Manick Chandra Nandy v. Debdas Nandy*<sup>3</sup>, that High Courts have been given the power of revisionary jurisdiction superintending and visitatorial power which enables them to support the aggrieved party as the HC can provide remedy for the on-appealable order.

In the present case, when the High Court was asked for a revision of the decision given by the lower court, it dived into the facts of the case and took into consideration the evidences presented in the lower courts. Whereas, with the help of the cases mentioned above it can be understood that even though the High Court did not deem fit the decision of the subordinate court to be proper, it doesn't have the power under revision to fix the error in law. This step of the High Court might fall under the category of how they deal with an appeal rather than revision. Hence, the Supreme court allowed the appeal as the revision wasn't performed as per the procedure established and moreover the High Court did not consider all the evidences either in reaching their decision.

## VI. LATEST POSITION OF LAW

As per the twenty seventh report of Law Commission<sup>4</sup>, S.115 of the Code was differently interpreted by the Privy Council in various cases. And due to the wide interpretation of the provision by the High Courts it resulted in opening of floodgates of revision applications majority of them being frivolous in nature and ultimately exploiting the provision altogether.

The Rule of Nisi can be issued only after proper scrutiny as the party has to state the reason why the ruling of the court would not apply, otherwise being absolute in nature. Furthermore, the record present with the lower courts shall not be called for revision if a stay order has not been granted, where necessary the copies are to be given. If a stay has been granted then the revision shall be made in the span of 2 to 3 months.

Moreover, the cause of delay as mentioned in the 54<sup>th</sup> Law Commission report that in proceedings is cause as interlocutory orders are entertained which results in stay of proceedings<sup>5</sup>

There were certain Amendments brought in by the State of Orissa in S. 115 which included District Courts along with the High Court which were granted power of revisionary jurisdiction.

The provision of revision under S.115 of CPC is still exploited which hinders the speed of

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<sup>3</sup> *Manick Chandra Nandy v. Debdas Nandy*, (1986) 1 SCC 512.

<sup>4</sup> Law Commission, The Code of Civil Procedure, 1908 (Law Commission No. 27, 1959), para. 54.

<sup>5</sup> Law Commission, The Code of Civil Procedure, 1908 (Law Commission No. 54, 1973), Chapter 1 L-2.

justice as even trivial matters which have been decided upon by the subordinate Courts are brought in the High Courts for revision.

## **VII. CONCLUSION AND SUGGESTIONS/RECOMMENDATIONS**

In conclusion, the High Court in the present case went beyond its power and disposed a revision which eventually was Appealed and the Apex Court pointed it out appropriately and allowed the appeal. And Courts have encountered several such instances time and again where they extended their reach, outside the power conferred upon them.

It is suggested to amend the Section 115 of the Code in order to provide clarity as to the intention of the provision which would also draw distinction between revision, appeal and review. Or on the contrary to that the provision can altogether be removed as Article 227 of the Constitution grants the power to the High Courts of superintendence but this is a drastic change and hence, the former suggestion is preferred. A judicious exercise of discretion is needed instead of a legislative change.

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