

(1975) 12 CAL CK 0006
In the Calcutta High Court

Messrs Steel Enterprises (P) Ltd.

APPELLANT

Vs

Sm. Saroj Somani and Others

RESPONDENT

Date of Decision : 15-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 225, 227
Government of India Act, 1915 — Section 108, 108(2), 108(2)
Government of India Act, 1935 — Section 223

Citation : (1975) 12 CAL CK 0006

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Advocate : R.C. Deb, Somnath Chatterjee, Probir Sen and P.K. Chatterjee, for the Appellant; Noni Coomar Chakraborty, S.B. Mookerjee and P.P. Mukherjee for the Opposite Party No. 1 and Mukul Gopal Mukherjee for the Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Bimal Chandra Basak

1. This application arises out of a revision petition filed in this Court which is directed against an order dated 26th of September, 1975 passed by Sri A. K. Sil, learned Subordinate Judge, Second Court, Alipore, 24-Parganas in title suit No.146 of 1975 (Smt. Saroj Somani v. Ms. Steel Enterprises Pvt. Ltd. and Ors.) (hereinafter referred to as the said suit). The facts of this case, so far as relevant for the purpose of this application, are set out herein below.

2. This suit was instituted by Smt. Saroj Somani for declaration that the defendant Nos.2, 3 and 8 therein are not Directors of Defendant No.1, Steel Enterprises Pvt. Ltd. (hereinafter referred to as the said Company); a declaration that the meeting of the Board of Directors of the said company purported to be held on January 31, 1975 is illegal and void; a declaration that the transactions purported to be passed at the meeting of the Board of Directors of the said

Company held in the absence of the plaintiff since her appointment are not binding on the plaintiff and the said Company declaration that the defendants Nos.2, 3, 8 and 9 are not capable and a fit to be appointed and/or to hold office as Directors of the said Company; a declaration that the purported annual general meeting of the said company scheduled to be held on 25th of August, 1975 is illegal, void and of no effect; permanent injunction restraining the defendants Nos.2, 3, 8 and 9 from acting and/or discharging duties as Director of the said Company and/or holding the office of Directors and/or performing the function of Directors of the said Company; injunction restraining the defendant Nos.2, 3, 8 and 9, their servants and agents from interfering with the management of and the affairs of the said company and for various other orders. In that suit an ex parte application was moved for appointment of Administrator and/or Special Officer of the said company with inter alia, all the powers of management, custody of the books, documents, property, assets and for carrying on the business of the said company and for other orders. Upon such application being made the learned 2nd Subordinate Judge at Alipore by his order dated 26th of January, 1975 directed issue of notice calling upon the defendants to show cause within fifteen days from the service thereof as to why the plaintiff's prayers in the terms as prayed for should not be granted till disposal of the suit. The learned Subordinate Judge also passed an ad interim order to the following effect: -

Having regard to the facts and circumstances of the case as mentioned above and for the purpose of keeping employment and production going on, increasing revenue to the Government and protecting interest of every body. I am inclined to allow the persons (3) in terms of the prayers made in the present petition as it appears to me to be just and convenient, with the condition that receiver/administrator to be appointed shall conduct the business, management and affairs of the company as noted below.

3. Let Sri Ranadev Chowdhury Bar-at-Law, and Sri P. N. Mathur, Chairman, BIC, Kanpore, be appointed as Administrators, for management, custody and possession of the assets properties and business of the company till disposal of the present petition. They shall work in terms of prayer (a), (b) and (c) to the petition. They shall be entitled to take necessary steps for compliance of this order including help from Govt. authorities and police.

4. The administrators so appointed shall conduct the business management and affairs of the company through a board of Management which shall consist of the above named Administrators, Sri H. K. Somani, Sri R. K. Somani (defendants 2 and 3), Sm. Saroj Somani (plff.) and Sri D. K. Somani (defendant no.7) who will act as member secretary. The administrators can nominate two more persons in the board from amongst the members of Somani family.

5. The administrators are allowed remuneration of Rs.1,000/- each per month which shall be borne by the company. They are further entitled from the company all expenses incurred in the matter of discharging their duties. Ad

interim injunction as prayed for be allowed.

Issue Writ accordingly.

Plaintiff to put in requisites at once.

6. It appears that thereafter another order was made by the learned Subordinate Judge on the 30th of September, 1975 to the following effect.

Extract from sheet from order No. 7 dt. 30-9-75.

Sri Ranadev Chowdhury Bar-at-Law one of the Administrators files an application praying for an order permitting Sri S. K. Mitra, Attorney-at-law to act on behalf the said administrator as his representative for the purpose of taking custody and possession and for taking preliminary actions in compliance with the order including to make inventory of the assets, records, properties etc. and to make a complete list thereof on the ground stated therein. Perused the petition.

7. The Receiver is permitted to choose his man for discharging duties entrusted to him.

Being aggrieved by the said ad-interim order passed on the 26th of September, 1975 this revision petition was moved before me during the Puja vacation on the 26th of October, 1975. After hearing the petitioners, I directed that the records be sent for and that Rule be issued calling upon the opposite parties to show cause why the order dated 26th September, 1975 passed by the learned Subordinate Judge, 2nd Court, Alipore should not be set aside or such other order or orders made as this Court may deem fit and proper. I also passed an interim order to the effect indicated therein. I directed that the said ad interim order would remain in force at the first instance till 28th of October, 1975 on which day this matter was to be listed for hearing at 11 A.M. The Rule was made returnable three weeks after long vacation. As directed by me the said matter appeared in my list during long vacation on the 28th of October, 1975 when I adjourned this matter till 30th of October, 1975. The ad interim order was extended till that date. On the 30th October, 1975 in the presence of the learned advocates for the parties and after hearing them, I passed certain other orders in addition to the interim order passed by me on the 26th of October, 1975. I made it clear that the said order along with the interim order passed on 26th October, 1975 would continue until an order is passed by the learned Subordinate Judge, Alipore after hearing the parties as stated in my order.

8. After Puja Vacation on behalf of the petitioners herein, an application was sought to be filed before me for hearing when I was sitting singly in the Constitutional Writ Jurisdiction when Mr. Chatterjee, appearing for the petitioners, stated, before me that it was for further interim orders, I expressed my doubts whether I had any jurisdiction to hear such application. Thereafter by an administrative order dated 13th of November, 1975 this application and the Civil Revision Case was assigned to me for hearing by the learned Chief Justice. In this application the petitioners herein are praying for certain other orders.

9. Mr. Chakrabarty learned Counsel appearing on behalf of the respondent No.1 raised a preliminary point before me regarding my jurisdiction to hear this application. Mr. Chakrabarty pointed out that this application arises out of a revision petition which has been filed in this Court. He submitted that no revision petition lies u/s 115 of the Civil Procedure (hereinafter referred to as the Code) because an appeal lies from the order of the learned Subordinate Judge which is impugned in this revision petition. He drew my attention to the application filed before the Subordinate Judge concerned which shows that it was under Order 39 Rule 1 and Order 40 Rule 1 of the Code. He has also drawn my attention to Order 43 Rule 1 of the Code and particularly clauses (z) and (s) thereof, which provide for an appeal in respect of an order under Order 39 Rule 1 and Order 40 Rule 1. Then he drew my attention to Section 115 of the Code and submitted that such revision petition lies from an order against which no appeal can be preferred. For the aforesaid reasons, Mr. Chakrabarty submitted that this revision petition is not maintainable and accordingly this application arising out of such revision petition is also not maintainable.

10. The next submission of Mr. Chakrabarty regarding my jurisdiction to hear this application was to the following effect. Mr. Chakrabarty submitted that a single Judge was not entitled to entertain this revision petition or this application arising out of such revision petition having regard to the real value of this revision petition. Mr. Chakrabarty has drawn my attention in this context to the Appellate Side Rules of this Court (hereinafter referred to as the said Rules). He has drawn my attention to Chapter II of Rule 1 and the proviso thereto read with the schedule to show that a Judge sitting singly can hear a revision petition only when the valuation did not exceed Rs.5,000/-. He did not specifically dispute the jurisdiction of a Judge sitting singly to entertain such a revision petition during the Vacation but he submitted that after the vacation, when the several Benches are sitting and taking the usual lists, such a Revision petition (and any application arising therefrom) could be heard only by a Division Bench, Accordingly he submitted that this application should have been moved before a Division Bench and not before a single Judge. According to him, a single Judge has no jurisdiction to entertain or hear any revision petition which is more than Rs.5,000/- in value. He submitted that though the revision petition filed in this Court is declared to be valued at Rs.5,000/- this is obviously wrong because this petition arises out of an order made in a suit which was valued at Rs.10,000/-. In this connection Mr. Chakrabarty relied on the decisions of (1) Golam Bari Molla and Others Vs. Rai Harendra Nath Chaudhuri and Another , (2) Chandmul Agarwalla and Others Vs. Lachminarayan Dalmia, , (3) Sheikh Hossain Vs. Mst. Naubahar Bibi, . When asked about the inherent power of the Chief Justice and the recent decision reported in (4) Tara Dutta v. State of West Bengal, reported in (1975) 2 Cal. L.J. 170 he submitted that this judgment related to the question of inherent power of the Chief Justice where the Rules do not expressly provide for the same and where the question is formation of a Special Division Bench. According to him the learned Chief Justice has no inherent power to allot a

matter to a single Judge which is otherwise to be taken up by a Division Bench according to Rules.

11. Mr. R. C. Deb appearing for the petitioners submitted that this application was made partly for variation of the order passed earlier by me. In this context he drew my attention to several prayers of the present application. He submitted that for this reason this matter has been assigned by the learned Chief Justice. Having regard to such assignment I had jurisdiction to hear this application. Next Mr. Deb submitted that the Chief Justice of a High Court, which is a Court of Records, has inherent power to assign any particular Case to any particular Bench and that the Rules cannot take away such power. In this context, Mr. Deb drew my attention to Section 108 (2) of the Government of India Act, 1915 which has been continued by Section 223 of the Government of India Act, 1935 and Article 225 of the Constitution of India. In this connection, he also drew my attention to the first portion of clause 36 of the Letter Patent of this Court Mr. Deb also submitted that the interpretation of the Rule 1 of Chapter II and particularly its proviso and schedule as given by Mr. Chakrabarty was not correct. He submitted that, it is true that the proviso gives certain powers to a single Judge to hear certain applications which otherwise he did not have on his own. But this did not, and could not take away the inherent power of the Chief Justice. Mr. Deb submitted that had it not been for the proviso, a single Judge could not have heard any matter without any assignment from the Chief Justice but having regard to this proviso to Rule 1 to Chapter 2, an assignment by a Chief Justice was not necessary before a single Judge could take up the matters specified therein. But the proviso does not and cannot take away the inherent power of the Chief Justice to allot any matter to any Bench. In this particular case, the matter has been specially assigned to this Bench and accordingly this Bench has jurisdiction to entertain this application in spite of such proviso. Such proviso was not a bar to such assignment. In this connection Mr. Deb relied on a decision reported in (5) Advocate-General, Andhra Pradesh, Hyderabad Vs. V. Ramana Rao, .

12. With regard to the submission of Mr. Chakrabarty that this revision petition is not maintainable because an appeal is provided for as against the impugned order, he submitted that no appeal lies from the impugned order directly or indirectly to the High Court and accordingly the High Court can entertain this revision petition against the impugned order of the Subordinate Judge. In this context Mr. Deb relied on the decision of the Supreme Court reported in (6) Major S.S. Khanna Vs. Brig. F.J. Dillon, . In any event, Mr. Deb submitted that it is merely an irregularity and this Court has always the power to treat a revision petition as a memorandum of appeal or vice-versa. Accordingly, this irregularity, if any, could not prevent this Court hearing the matter on merits.

13. Mr. S. B. Mukherjee, learned Advocate appearing for the respondent No.1 (with Mr. N. C. Chakrabarty) submitted in reply that even if this application is in the nature of an application for variation of my earlier orders which he strongly

disputed even then this application could not have been entertained by me on my own without the assignment by the learned Chief Justice. So far as the assignment in the present case is concerned, he submitted that the assignment was not proper because the letter asking for assignment shows that the proper facts and the relevant Rules were not placed before the learned Chief Justice. The relevant Rules, showing that this was to be ordinarily dealt with by a Division Bench and not by a Single Judge were not drawn to the attention of the learned Chief Justice. Accordingly the assignment in the present case was not valid and proper and accordingly I had no jurisdiction to hear this application. In any event he submitted that this was not an application for variation of my earlier order. In this context he drew my attention to the cause title of this application wherein it was stated that it was an application for further interim orders. He also drew my attention to the various prayers to this petition which would show, according to him, that this was a fresh application for further order and not an application for modification of variation of an order passed by me earlier. Regarding the inherent power of the Court he submitted that the learned Chief Justice has inherent power regarding the constitution of Bench, that is, who will sit in what Bench but he cannot direct any matter to be heard by any Bench which under the Rules is not entitled to hear the same. He did not dispute the inherent power of the Chief Justice regarding assignment of a case to any particular Judge or Judges but he submitted that this power must be read with the Rules.

14. Let me first deal with the submission of Mr. Chakrabarty regarding the maintainability of the revision petition on the ground that the order impugned is an appellable order therefore a revision petition u/s 115 of the Code is not maintainable. Section 115 of the code provides that the High Court may call for the records of any case which has been decided by any Court sub-ordinate to such High Court and in which no appeal lies thereto. The important portion for the purpose of our case is "and in which no appeal lies thereto." This Section came up for consideration before the Supreme Court in the case of (6) Major S. S. Khanna v. Brig. F. J. Dhillon (Supra), wherein it was held that expression "case" includes a part of a case. It was held that 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. In this context, it was observed that the expression "in which no appeal lies thereto" is not susceptible of the interpretation that it excludes the exercise of the revisional jurisdiction when an appeal may be competent from the final order. It was stated that 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, the High Court 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 the revisional jurisdiction by the High Court. Could not be deemed excluded. In the present case, the admitted position is that no appeal lies to the High Court directly from the impugned order. For the aforesaid reasons, I am of the opinion that this revision petition is maintainable

and not barred by Section 115 of the Code. Accordingly I reject this contention of Mr. Chakrabarty.

15. Now I shall deal with the submission of Mr. Chakrabarty as to whether being a single Judge I am entitled to hear this revision petition or this application made in such petition. Before I do so, let me set out the relevant provisions of the different law relied upon and different cases cited by the parties before me. Chapter II Rule 1, the proviso and schedule thereto provide as follows:

1. A Division Bench for the hearing of appeals from decrees or orders of the subordinate Civil Courts shall consist of two or more Judges as the Chief Justice may think fit:

(i) Provided that it shall be competent for one Judge to hear appeals and applications in all matters specified in the subjoined Schedule except where such appeals, applications or matter involve a substantial question of law as to the interpretation of the Constitution of India made thereunder. He may, however, send back any particular case he thinks fit to a Division Bench taking such cases for disposal.

16. Where at any stage of the hearing of an appeal, application or other matter it appears to the Judge that it involves a substantial question of law as to the interpretation of the Constitution of India he shall send the appeal, application or other matter to the Division Bench taking such cases for disposal.

Schedule (referred to in proviso (i) above)

(civil work).

(3) Application for revision u/s 115, CPC against all orders of Munsifs, and against the orders of other judges up to the value of Rupees 5,000/- and all rules granted on such applications.

Chapter IV Rule 2 of the said Rule provides as follows:

2. In every application presented to the High Court there should be stated, immediately after the cause title, the section and statute under which the application is made, the date of the order complained of, and whether the subject of the suit, out of which the application arises, does or does not exceed Rs. 5000/- Section 108 of the Government of India Act, 1915 (hereinafter referred to as the 1915 Act) provides as follows: -

108. (1) Each High Court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges of the High Court, of the original and appellate jurisdiction vested in the court. (2): - The Chief justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the court, whether with or without the Chief Justice, are to constitute the several division courts.

Section 223 of the Government of India Act, 1935 (hereinafter referred to as the

1935 Act) provides as follows: -

223. Subject to the provisions of this Part of this Act, to the provisions of any order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the Judge thereof in relation to the administration of justice in the court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of part III of this Act.

Article 225 of the Constitution of India (hereinafter referred to as the Constitution provides as follows: -

225. Subject to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

17. In the case of Golam Bari Mullah (Supra) a Rule was issued in a Civil Revision Case which arose out of an application made u/s 37A of the Bengal Agricultural Debtors Act by certain debtors. The decree was one for rent and in execution of that decree the landlords decree-holders purchased the lands of the holding concerned at a piece of Rs.3,000/-. Upon the application u/s 37A, it was held by the Board that nothing was due and restoration was ordered. That order was upheld by the Appellate Officer but reversed by the District Judges in revision who dismissed the debtors' application u/s 37A. It was against that order that the Rule was issued. The Rule was taken out from Mukherjee J. sitting singly. It was stated in the petition that the application was valued at below Rs.2,000/-. An objection taken on behalf of the opposite was that the valuation exceed Rs.2,000/- and inasmuch as the order complained of is an order of a District Judge, a Judge sitting singly was not competent to deal with this matter. It is to be pointed out that by a subsequent amendment to the Rules it has now been raised from Rs.2,000/- to Rs.5,000/-. Chakrabarty J. (as he then was) observed that the Appellate Side Rules provide that every application for revision shall state the value of the suit to which the application for revision relates. The clear implication of that provision was that ordinarily the test for determining the value of an application for revision shall be the value of the suit. In the facts and circumstances of the case the learned Judge held that test however did not apply to an application u/s 37A of the Bengal Agricultural Debtors Act, because it had no reference to a suit. However, under the facts of that case it was held that the order of the District Judge related to a subject matter of which the value is at

least within Rs.3,000/-. Accordingly it was held that the learned Judge of this Court, sitting singly, had no jurisdiction to issue the rule that was actually issued. Following the earlier decisions of this Court his Lordship accordingly held that the Rule should be dismissed. In the case of Chandmall Agarwalla (Supra) the Rules before the Division Bench arose out of applications made for standardization of the rents under the West Bengal Premises Rent Control Act. In each of the applications before this Court it was stated that the value was below Rs.1,000/- and on that footing the tenants went to the learned Judge sitting singly and obtained Rules from him. In this context it was observed that if a Rule was issued by a learned Judge, sitting singly, in a case where, under the distribution of business I this Court, only a Division Bench can valid Rule. After discussing the test to be followed for valuation of an application for standardisation of rent, their Lordships of the Division Bench held that the applications made by the tenants were beyond the jurisdiction of a learned Judge, sitting singly and therefore the Rule issued at the instance of the tenants were not competent. However, the Division Bench treated the Rules as re-issued by themselves and proceeded to dispose of the same on that basis. In the case of Hariram Agarwala (Supra) it was a decision of a Division Bench of this Court. It was an application for revision under Article 227 of the Constitution of India which was originally valued at below Rs.4,000/- and was moved before A.C. Gupta J. sitting singly. Gupta J. issued a Rule on the application and thereafter the matter came before his Lordship for hearing. It was held by Gupta J. that the application was wrongly valued as below Rs.5,000/- and he held that as the impugned orders were made in a suit, valued at over Rs.2,00,000/- the application ought to have been valued at above Rs.5,000/- and upon such valuation he would not have any jurisdiction to entertain the application. Accordingly he recalled his previous order issuing the Rule, and all subsequent orders made by him therein. There was however, no actual order directing return of the application to the learned Advocate for presentation to the appropriate Bench. Thereafter, it was moved before the Division Bench without certified copies of the orders. Their Lordships held that in such a case the application might be returned by the single Judge to the learned advocate for the petitioner for presentation to the appropriate Bench. It was stated that this was overlooked in the case of Golam Bari Mullah (Supra).

18. From the aforesaid Acts, Rules and decisions, the position appears to be as follows. Ordinarily, in view of the Rules of this Court and the general distribution of business, a revision petition is to be heard by a Division Bench when it is more than Rs.5,000/- in value. When the value is Rs.5,000/- or less, it may be heard by a Judge sitting singly. The valuation for this purpose would depend not on any fanciful or arbitrary valuation made by any part as he chooses but it would depend on the valuation of the suit when it arises out of any order passed in a suit. If any petition or any application, the value of which is more than Rs.5,000/-, is moved before a Judge sitting singly when a regular Division bench is sitting, the learned single Judge would have no jurisdiction to entertain the same and the same should be returned to the learned Advocate for the petitioner

for its proper presentation to the appropriate Bench. In the case before me though in the revision petition it was stated that the value was Rs.5,000/- but having regard to the valuation of the suit, the real value must be taken to be Rs.10,000/- and not Rs.5,000/-. Accordingly in the usual course it should have been filed before a Division Bench if there was a regular Division Bench. However, it is not submitted in this case that I had no jurisdiction to entertain the Revision petition and issue the Rule sitting singly during the vacation. However, after the long vacation, according to usual distribution there was such a Division Bench and accordingly this application could not have been taken up by me on my own. In view of the relevant Rules as explained by the decisions referred to above, this application, which was moved after the Long Vacation, should ordinarily have been moved before and heard by the Division Bench hearing revision petitions of more than Rs.5,000/- in value.

However, in the present case the position is that this application was moved before me and heard by me after the revision petition and the application was assigned to me by the learned Chief Justice on the 13th November, 1975. In my opinion, the Chief Justice of a High Court and particularly a Letters Patent High Court which is a Court of record, has an inherent power to allot any matter to any Bench. Allocation of work is entirely within his inherent power. This inherent power has not been and cannot be curtailed by any Rule of this Court. The Rule may only make some general provisions regarding the same. But they cannot and do not take away the inherent power of the Chief Justice to allot any matter to any particular Bench. This inherent power of the Chief Justice of a High Court has been recognised by clause 36 of the Letters Patent of this Court which provides that any function which is directed to be performed by the High Court in the exercise of its Original or Appellate jurisdiction, may be performed by any Judge or by any Division Court thereof, appointed or constituted for such purpose in pursuance of Section 108 of the 1915 Act. This inherent power of the learned Chief Justice has also been recognised by Section 108(2) of the 1915 Act which provides that the Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts. This recognises the inherent powers of the Chief Justice to allot any matter to any Bench. This provision of Section 108(2) has been kept alive by the provisions of Section 223 of the 1935 Act and Article 225 of the Constitution of India. This inherent power of the Chief Justice which has been safeguarded by the Constitution of India cannot be curtailed or abridged by any such Rules. We should not interpret the Rule in such a fashion which would be inconsistent with such inherent power of the Chief Justice as guaranteed by the Constitution. What the Rules merely provide is, that even without any general or specific allotment by the Chief Justice a single Judge can hear certain matters. But that does not mean that under no circumstances a single Judge is entitled to hear any other application. Distribution of work is the function of the Chief Justice and the Chief Justice alone. In some cases under the Rules the single Judge has been given a

jurisdiction to hear some matters. But such Rules do not prevent the Chief Justice from allotting any particular case to any particular Bench though not provided in the Rules. These Rules do not in any way curtail the inherent power of the Chief Justice. Any other interpretation would amount to the said Rules being inconsistent with the provisions of Article 225 of the Constitution of India read with Section 108(2) of the 1915 Act and Section 223 of the 1935 Act. In the present case the Civil Revision petition and this application arising therefrom have been assigned to me for hearing by the learned Chief Justice. In this context I should also point out that the schedule to Chapter II of the Rules as referred to above, is with reference to proviso (i). The said proviso is a proviso to Rule 1 which deals with appeals and not revision petitions. For the aforesaid reasons I hold that I have jurisdiction to entertain this application and hear the same though ordinarily, on my own I could not have entertained the same. I also reject the contention of the respondents that merely because the Rules were not brought to the attention of the learned Chief Justice for such reason alone such assignment by the learned Chief Justice is to be held as incompetent or improper. The reasons given in a letter asking for such assignment may be good, bad or indifferent. Such request may contain some incorrect statement or conceal some material facts or law but that would not make the assignment bad. If necessary, the proper facts may be placed before the Chief Justice and prayer may be made for re-assignment of the same if it considered necessary. But as long as the assignment stands the Courts concerned will have jurisdiction. Accordingly, I hold that I have jurisdiction to entertain this application and dispose of the same on merits.

19. Similar question arose in the case of Advocate General of Andhra Pradesh (*supra*). In that case it was argued that the relevant contempt application was to be heard by the first Bench according to the Rules and not by the Bench before which it was actually heard. After consideration of the relevant provisions of clause 36 of the Letters Patent of the Madras High Court, 1915 Act and 1935 Act and the Constitution it was held that such Rules cannot derogate from the inherent power of the High Court as the Court of Record. Nor can they detract from the powers conferred under Article 225 of the Constitution. It was further pointed out that the power of the Chief Justice as conferred by section 108(2) of the 1915 Act, which was preserved by the Constitution cannot be taken away by the Rules. I respectfully agree with the same.

20. The inherent power of the Chief Justice regarding formation of Bench was also recognised by Supreme Court in the case of (7) *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, which was relied upon in *Tara Dutt's case* (*Supra*).

21. There is one other contention which need be dealt with. It has been contended on behalf of the petitioner that apart from the question of assignment, this is an application mainly for variation of my earlier order and accordingly I have jurisdiction to hear this application in spite of any such Rules. It is not necessary for me to go into the question and decide as to whether a learned

Judge has the power on his own and without any assignment by the learned Chief Justice to entertain an application because it appears to be an application for variation of an earlier order passed by him though under the ordinary distribution of work he would not have any power to entertain the same. In my opinion, this is not an application for variation of order or orders passed by me earlier. In form and substance this fresh application shows that this is for further interim orders. The cause title of this application makes it clear that it is an application for further interim orders. The nature of the prayers made in this application also makes it clear that it is for additional orders and not for variation of any of my earlier orders. In this context I may also point out that when Mr. P. K. Chatterjee wanted to file this application in my court to be listed for hearing by me, I specifically asked him whether it was asked him whether it was an application for variation of my earlier order or whether it was a fresh application. To that Mr. Chatterjee frankly told me that it was not an application for variation of an order passed by me earlier but a fresh application for further orders. Upon such statement of Mr. Chatterjee, I expressed my doubt as to whether I had jurisdiction to hear this application after which this matter was assigned to me at the request of Mr. Chatterjee. Accordingly I must hold that this is not an application for variation of any order passed by me earlier but a fresh application for further interim orders.

22. For the reasons aforesaid, I hold, that ordinarily this application could not have been entertained by me because this is in application in a revision petition value of which is more than Rs.5000/-. However, having regard to the assignment of this case to me by the learned Chief Justice, I am competent to hear this application.

23. In view of the above I would have proceeded to hear this application on merits, had it not been for one fact I have held that the assignment by the learned Chief Justice cannot be challenged before me merely because certain Rules were not brought to the notice of the learned Chief Justice when the prayer for assignment was made. However, the fact still remains that the relevant Rules of this Court were not brought to the attention of the learned Chief Justice. It was not pointed out in the letter asking for assignment that ordinarily an application of this nature, where the valuation is more than Rs.5,000/- is to be heard by a Division Bench. It was frankly stated before me on behalf of the petitioner that as the revision petition was valued at Rs.10,000/- the question of "real valuation" and the implications thereof were not considered at that point of time. I do not blame the petitioners. The real position transpired only during the course of arguments of the learned Advocate before me. Generally, an assignment is made to learned Judge when otherwise he had no jurisdiction to hear the matter. Ordinarily, these assignments are not made to a single Judge when under the ordinary distribution of work it is to be heard by a Division Bench which is in existence. For the aforesaid reasons, in my opinion, this matter should be placed before the learned Chief Justice for his consideration inasmuch as I am of the opinion that the real facts and the position in law, as transpired

during the hearing of the case, were not before him when the assignment was made.

Accordingly I pass the following order: -

Let the records of this case be placed before the learned Chief Justice for his consideration and for necessary orders, if any.