

(1989) 01 AP CK 0019

In the Andhra Pradesh High Court

Case No : C.R.P. 3775 and 3776 of 1988

M/s. Hindustan Steel Works Construction Ltd.

APPELLANT

Vs

M/s. Tarapore and Co. Madras

RESPONDENT

Date of Decision : 17-01-1989

Acts Referred:

Andhra Pradesh Civil Courts Act, 1972 — Section 31, 32(1), 32(5), 32(6), 33
Arbitration Act, 1940 — Section 39, 41
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 3, Order 43 Rule 1, 115, 24
Constitution of India, 1950 — Article 214
Limitation Act, 1963 — Section 4

Citation : AIR 1990 AP 82

Hon'ble Judges : Syed Shah Mohd. Quadri, J

Bench : Single Bench

Advocate : A.G. for the Appellant; T.S. Subrahmanyam, for the Respondent

Judgement

1. An interesting question as to whether a civil revision petition filed under S. 115 of the CPC against an ex parte interim order passed by the High Court during Dasara vacation on an application under S. 33 of the Andhra Pradesh Civil Courts Act, 1972 (for short "the Act") is maintainable arises in these petitions.

2. The revision petitioner in both the petitions is a Government of India undertaking. On 25-10-84, it entered into a contract for construction of civil works in the blast furnace zone of Visakhapatnam Steel Plant with the respondent-Company of value of Rupees seventeen crores and odd. In the execution of the said contract, some disputes arose between the parties, which were referred to arbitrator. When the proceedings were pending before the arbitrator, the petitioner terminated the said contract, which was challenged by the respondent in suits filed in the court of District Munsif, Visakhapatnam seeking injunction not to terminate the contract and other incidental reliefs. The respondent also prayed for temporary injunction against the petitioner restraining it from encashing the bank guarantees. The learned Dist. Munsif granted ex parte interim injunction.

While the matter stood thus, the respondent filed C.M.P. No. 16290 to 16294 of 1988 in this court during Dasara Vacation of 1988 u/s 33 of the Andhra Pradesh Civil Courts Act, 1972 on 21-10-1988, interim order was granted by the High Court in C.M.P. No. 16292 of 1988 restraining the petitioner from interfering with the removal of the machinery and material by the respondent. In C.M.P. No. 16293 of 1988 interim injunction was granted restraining the petitioner from awarding the pending works under the said contract pending final measurement of the work and in C.M.P. No. 16294 of 1988 interim injunction was granted restraining the petitioner from encashing the bank guarantees. After the reopening of the Courts, the C.M.Ps. were transmitted to the court of the Principal Subordinate Judge, Visakhapatnam. C.M.P. No. 16290 of 1988 was renumbered as O.P. No. 456 of 1988, C.M.P. 16293 of 1988 was renumbered as I.A. No. 643/88 in O.P. No. 456/88 on the file of the Principal Subordinate Judge, Visakhapatnam, C.M.P. 16292/88 was renumbered as 1. A. No. 642/88. C.R.P. 3775/88 is directed against the order dated 21-10-1988 passed by the High Court in C.M.P. 16293 of 1988 (I.A. No. 643 of 1988 on the file of Principal Subordinate Judge, Visakhapatnam) and C.R.P. 3776 of 1988 is directed against the ex parte interim injunction order dated 21-10-1988 passed in C.M.P. No. 16293 of 1988 (I.A. 642 of 1988 on the file of Principal Subordinate Judge, Visakhapatnam). On 2-12-1988 these Civil Revision Petitions were admitted and interim orders granted by this court on 21-10-1988 were suspended in C.M.P. Nos. 18508 and 18509 of 1988. The respondents filed petitions praying to vacate the interim suspension granted by the High Court on 2-12-1988. Though the CMPs were posted for hearing, both the learned counsel for the parties represented that the arguments in the CMPs. are the same as in the C.R.Ps. and requested that the CRPs. themselves may be disposed of. Accordingly, the C.R.Ps. are being disposed of.

3. Sri Subrahmanyam the learned counsel for the respondent raised a preliminary objection with regard to the maintainability of the CRPs. u/s 115, C.P.C. the learned counsel challenged the maintainability of the CRPs. on the following grounds:

(a) The order passed by the learned single Judge of the High Court on 21-10-1988 in the CMPs. is not an order passed by a court subordinate to the High Court, therefore, power u/s 115, C.P.C. cannot be invoked to revise the said order.

(b) An appeal lies against an ex parte interim injunction granted under O. 39, R. 1, C.P.C. so revision u/s 115, C.P.C. is not maintainable.

(c) No C.R.P. lies against an ex parte interim order as the order does not amount to a "case decided" within the meaning of Section 115, C.P.C. In any event, the order under revision does not suffer from any error of jurisdiction so as to be amenable to the jurisdiction of the High Court u/s 115, C.P.C.

4. The learned Advocate-General appearing for the petitioner submits that having

regard to the provisions of sub-section (5) of S. 32 of the Civil Courts Act which has to be read in S. 33 of the said Act, the order passed by the High Court would be deemed to be an order passed by the concerned court viz. Principal Subordinate Judge, Visakhar patnam which is a court subordinate to the High Court as such the order dated 21-10-1988 is feviseable by the High Court.

5. It is next contended that the interim injunction was granted under S. 41 read with Item 4 of the Second Schedule of the Arbitration Act against which no appeal is provided in S. 39 of the said Act, therefore, it-is not appealable as such the revision would be maintainable.

6. It is lastly contended that the order was passed without complying with the requirements of R. 3 of O.39, C.P.C. as such it is void order and, therefore, revisable.

7. In view of these rival contentions, the only question which falls for consideration is whether on the facts and in the circumstances of the case, the requirements of S. 115, C.P.C. are satisfied. It will be useful to read S. 115, C.P.C. here.

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

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

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

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity the High Court may make such order in the case as it thinks fit;

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

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this section vary or reverse any decree or order, against which an appeal lies either to the High Court or to any Court subordinate thereto.

Explanation : In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

8. From a plain reading of the section, it is clear that the discretionary revisional jurisdiction of the High Court can be invoked (a) when any court subordinate to

the High Court (b) has decided a case (c) against which no appeal lies either to the High Court or to any court subordinate thereto and (d) the impugned order is vitiated by an error of jurisdiction, namely that court has either exercised jurisdiction not vested in it by law or failed to exercise jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with material irregularity.

9. If any one of the conditions (a) to (d) is not fulfilled, the revision petition will not be maintainable. By Amendment Act of 1976 two limitations have been placed on the exercise of the discretionary jurisdiction of the High Court under S. 115, C.P.C.

"(a) the order, if it had been made in favour of the party applying for revision, would have" finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

The first question that has to be considered now is whether the order passed by the single Judge of the High Court during vacation is an order passed by a court subordinate to the High Court.

10. We may now notice some relevant provisions of the Andhra Pradesh Civil Courts Act 1972 which provides, inter alia, for vacation of the civil courts and appointment of vacation civil Judge and the matters relating thereto. Section. 31 says that the, courts under the control of the High Court may adjourn, from time to time for such periods not exceeding in the aggregate two months in each year as may be notified by the High Court. Sections 32 and 33 of the Act which are relevant for our purpose may be extracted here.

"32(1) Notwithstanding anything in this Act or in the CPC Code 1908, the High Court may for the duration of the adjournment, of any District Court in summer, appoint for such District Court a Vacation Civil Judge not below the rank of a District Judge or the Government may, after consultation with the High Court, so appoint a Vacation Civil Judge, not below the rank of a Subordinate Judge.

(2) (a) The local limits of the jurisdiction of the vacation Civil Judge shall be the same as those of the District Court concerned.

(b) The jurisdiction of the vacation Civil Judge shall extend to all suits, appeals and other proceedings pending in or cognizable by, any court (whether a District Court, a Court of Subordinate Judge or a Court of District Munsif) in the district concerned such Court is adjourned for summer vacation.

(3) The place, at which the Court of the Vacation Civil Judge shall be held, shall be the same as the place at which the District Court concerned may be held. The Vacation Civil Judge shall have such administrative control over the staff of the Courts in the District as the High Court may, by general or special order, determine.

(4) Notwithstanding the appointment of the Vacation Civil Judge, every Court in

the District shall, during the period it is adjourned for summer vacation be deemed to be closed for the purpose of Section 4 of the Limitation Act.

(5) On the reopening of the District Court a Court of Subordinate Judge or a Court of District Munsif after the summer vacation, all suits, appeals, and other proceedings pending in the court of the Vacation Civil Judge which, but for this section would have been instituted or pending in such District Court, Court of Subordinate Judge or Court of District Munsif as the case may be, shall stand transferred to the Court concerned and any judgment, decree, order or proceeding passed by the Vacation Civil Judge shall, after such transfer, be deemed to be a judgment, decree, order or proceeding passed by the Court concerned.

(6) Notwithstanding the provisions of subsection (5), any appeal from the judgment decree or order of the Court of the Vacation Civil Judge, shall, when such appeal is allowed by law, lie to the High Court

33. When the District Court or the Court of Subordinate Judge, or the Court of Munsif to which a suit, an appeal or other proceeding lies is adjourned u/s 31 and when no Vacation Civil Judge is appointed under sub-section (1) of Section 32, the High Court shall have the power to receive such suits, appeals and other proceedings."

11. From a perusal of the above sections, it is clear that sub-section (1) of Section 32 provides that notwithstanding anything in the Act or the CPC the High Court or the Government may appoint for the duration of the adjournment of the District Court in summer vacation, a vacation civil Judge (for short "Vacation Judge"). If the appointment is made by the High Court, a District Judge has to be appointed as Vacation Judge but if the appointment is to be made by the Government, the vacation judge shall not be below the rank of the Subordinate Judge, but the appointment of Vacation Judge by the Government must be in consultation with the High Court. The jurisdiction of the Vacation Judge of a District is co-extensive with that of the District Court concerned. The Vacation Judge is vested with the jurisdiction to entertain all suits, appeals and other proceedings pending in or cognizable by any Court (whether a District Court, a Court of Subordinate Judge or a Court of District Munsif) in the District concerned when such Court is adjourned for summer vacation. Sub-section (5) of Section 32 provides that on the reopening of the District Court, court of Subordinate Judge or a Court of District Munsif after the summer vacation, all suits, appeals and other proceedings pending in the Court of the Vacation Judge which would otherwise have been instituted or pending in such District Court, Court of Subordinate Judge or a Court of District Munsif, as the case may be, shall stand transferred to the Court concerned and any judgment, decree, order or proceeding passed by the Vacation Judge, shall, after such transfer be deemed to be a judgment, decree, order or proceeding (for short "the order") passed by the Court concerned. S. 33 empowers the High Court to receive suits, appeals and other proceedings, when the District Court or the Court of Subordinate Judge

or the Court of District Munsif to which any suit, or appeal or proceeding lies, is adjourned under S. 31 and when no Vacation Judge is appointed under S. 32(1) of the Act.

12. The learned Advocate-General contends that if S. 33 is read in isolation, the High Court has power only to receive suits, appeals and other proceedings but there is no power to pass any interim order or to transmit them to Courts concerned. It is further contended that if the order passed by the High Court during vacation is not deemed to be the order passed by the Court concerned, it would not be open for that Court to deal with that order either by vacating the same or confirming the same; in which event, the party against whom an order has been passed would be without any remedy of getting the order vacated or of filing an appeal against that order. The only way, submits the learned Advocate-General, to avoid such consequences is to read sub-sec. (5) of S. 32 in S. 33 of the Act.

13. Sri Subrahmaniam, the learned counsel for the respondent, submits that the power to pass interim order and the power to transmit cases to the courts concerned is implicit in S. 33 itself and that the Court concerned deals with the order passed by the High Court in vacation not because of the statutory fiction of treating the order of the vacation Court as one of the Court concerned but because of the direction of the High Court to pass appropriate orders in the case while transmitting the case to the Court concerned.

14. We have already noticed that S. 31 contemplates vacations for Civil Courts, that is, adjournment of the civil courts for different periods in a year and that sub-sec. (1) of S. 32 of the Act empowers the High Court and the Government to appoint a vacation judge for the duration of the adjournment of any District Court in summer. There is no provision for appointment of a Vacation Judge in the Pongal vacation or the Dasara Vacation. It may even be that in a summer vacation, no vacation judge is appointed for a district. It is in these situations that the High Court can be approached under S. 33 of the Act. It is seen that sub-sec. (2)(b) of S. 32 extends the jurisdiction of the vacation judge to all suits, appeals and other proceedings pending in or cognizable by any courts, whether a District Court, Subordinate Judge's Court or the Court of District Munsif, in the district concerned, when such Court is adjourned for summer vacation. When a vacation judge entertains cases under sub-sec. (2)(b) of S. 32, they stand transferred to the Court concerned on reopening of the courts and by a statutory mandate contained in sub-section (5) of S. 32, after such transfer, the judgment, decree, order or proceeding passed by the vacation judge is deemed to be the judgment, decree, order or proceeding passed by the Court concerned. The order passed by the Vacation Judge, may be either interim or final; may be either appealable or non-appealable. The consequence of the deeming provision would be that if the order is an interim order, it would be open to the Court concerned to treat the order as one passed by that Court and pass such further or other orders as it may deem just and proper, after hearing both the parties; if the

order is an appealable one, sub-sec. (6) ensures that the appellate judge either equal or lower in rank than the vacation judge should not sit in appeal over the order passed by the vacation judge, which, by virtue of the statutory fiction, treated as orders passed by the judge concerned and provides that appeal should lie to the High Court where such an appeal is allowable by law. While empowering the High Court under S. 33 to receive the suits, appeals and other proceedings when no vacation judge is appointed, it was open to the legislature to provide that provisions of sub-sec. (5) of S. 32 of the Act would apply to such orders. As noticed above, the power of the High Court under S. 33 of the Act is not only during summer vacation but also during Pongal and Dassara Vacations. From a reading of S. 32 of the Act, it is clear that the provisions made therein are only for summer vacation. To read sub-sec. (5) of S. 32 in S. 33, it has to be suitably changed to fit in S. 33 and in doing so, the Court will not be interpreting the provisions of the Act but be legislating which is impermissible as it is not the Court to rewrite the provisions of the Act, either by supplying the omissions in or by eliminating the words from the statute which is the exclusive domain of the legislature.

15. Mr. Subrahmaniarn, has also relied on the following passages in Craies on Statute Law (Seventh Edition) at pages 70 and 71:

"In other words, the language of Acts of Parliament, and more especially of modern Acts, must neither be extended beyond its natural and proper limits, in order to supply omissions or defects, nor strained to meet the justice of an individual case, "if, said Lord Brougham in *Gwynne v. Burnell*, (1840) 6 Cl & F 572, 696) "we depart from the plain and obvious meaning on account of such views (as those pressed in argument on 43 Geo. 3, c. 99), we do not in truth construe the Act, but alter it. We add words to it, or vary the words in which its provisions are couched. We supply a defect which the legislature could easily have supplied, and are making the law, not interpreting it." and Maxwell on "The Interpretation of Statutes" at p. 33 :

"A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional."

In my view, the said passages apply on all fours and furnish good guidance in interpreting the provisions in question.

16. For all these reasons, I am unable to accede to the contention of the learned Advocate-General that sub-sec. (5) of S. 32 has to be read in S. 33 of the Act so as to treat the order dated 21-10-1988 in C.M.Ps passed by the High Court as one passed by the Principal Subordinate Judge, Visakhapatnam. In my view, any interim order passed by the High Court during vacation on an application to receive and transmit under S. 33 of the Act remains very much the order of the High Court even after vacation.

17. This leads to the incidental question, how can the lower Court, after

transmitting the case to it, reconsider or revise the order of High Court passed during vacation? The learned Advocate-General contended that even if the order in question is taken as order of High Court only, the trial Court cannot reconsider or revise and vacate that order; He relied upon the observations of a learned single Judge of this Court in *V. Rama Rao v. K. Balakotaiah*, (1985) 3 APLJ 174 which read thus:

"When such situation does arise, when the Vacation Civil Judge is a District Judge, it is incomprehensible to contend that merely because the order is transmitted to the District Munsif, the District Munsif is empowered to revise the order or reconsider the order passed by the Vacation Civil Judge, be it a District Judge or a Subordinate Judge. If the contention of the learned counsel is given credence to the logical result would be the order passed by the Vacation District Judge would be reconsidered by the District Munsif in a suit triable by a District Munsif or a Subordinate Judge, to sit over as an appellate Judge over the orders passed by the Vacation District Judge. Such situation would be incongruous and incompatible."

18. To appreciate this contention, let us read the orders passed by the High Court in the CMPs. On 21-10-1988, which are extracted here.

"That an injunction do issue restraining the respondent herein from interfering with the petitioner's removal of the material and machinery belonging to the petitioner kept at the site by the petitioner carrying on the work, pending further orders on the said OP (SR) 56660/88 by ...the said Court of the Sub ordinate Judge Visakhapatnam. That an injunction do issue restraining the respondent from awarding the pending works in respect of the contract entered into with the petitioner pending final measurement of the work executed so far by the petitioners pending further orders on the said OP (SR) 56660/88 by the said Court of the Subordinate Judge Visakapatnam".

19. From a reading of the above extracted orders of the High Court, it is manifest that the High Court granted interim orders, pending further orders on the petitions by the Principal Sub-ordinate Judge, Visakhapatnam. The High Court did not pronounce itself on the merits of the case. It granted interim relief pending consideration of the matter on merits by the concerned Court. The interim order passed by the High Court is so couched that its life comes to an end on the happening of a contingency or fulfilment of a condition --here the contingency being passing of order on the application by the Subordinate Judge Visakhapatnam. On passing orders on the petition by the Subordinate Judge the interim order of the High Court automatically comes to an end. Just as an interim order "interim injunction for one month", comes to an end on the expiry of one month, so also an interim order "pending further orders on the said O.P. by the said Court of the Subordinate Judge, Visakhapatnam" comes to an end on passing of order on the application by the Subordinate Judge, Visakhapatnam. In passing orders on the application of a party after it is transmitted to his Court, the Subordinate Judge Visakhapatnam will neither be revising nor reconsidering

the interim order of the High Court but would be passing appropriate orders after hearing both parties in conformity with the order passed by the High Court. It is not disputed that but for the adjournment of the lower courts for Dassara Vacation, the Principal Subordinate Judge would have entertained the case and passed appropriate orders. By virtue of S. 33 of the Act during vacation, the High Court received the C.M.Ps. and granted interim injunction pending further orders on it by the Principal Subordinate Judge. It therefore follows that the trial Court is free to pass appropriate orders after hearing both the parties. In Rama Rao's case (supra) against the order of the Vacation Judge, one appeal was filed in the Court of the Subordinate Judge and another appeal was filed in the High Court. On an objection regarding maintainability of the appeal in the High Court the learned Judge on interpretation of sub-sec. (6) of S. 32, held that the appeal in High Court is maintainable. Having regard to the deeming provision in S. 32(5) it was not in dispute that the order passed by the vacation Judge shall be deemed to be the order passed by the Court concerned. The question was not whether the concerned Court could pass an order different from the one passed by the Vacation Judge but whether against the order of the Vacation Judge an appeal lies to the Sub-Court or the High Court?

It is in the backdrop of the facts of that case and the contention raised in that case, the observation of the learned Judge has to be understood. It may also be recalled that before the passing of the Civil Courts Act, no vacation Judge was being appointed for the lower courts. The High Court was entertaining the application to receive suit, appeal or other proceeding under the inherent power and after passing appropriate orders under the relevant provisions of the CPC transferring the case to the Court concerned under S. 24, C.P.C. on the application to receive and transmit. After the transfer of the case, the concerned Court used to pass further orders on the interlocutory applications, after hearing both the parties. By Civil Courts Act this practice was introduced at the District Court level by appointing a District Judge as Vacation Civil Judge. Section 32 gives effect to that practice. In so far as the High Court is concerned specific provision in Section 33 is enacted to empower (he High Court to receive suit, appeal or other proceeding. The High Court passes appropriate orders under the relevant provisions of the CPC in suits, appeals or other proceedings and transfers the same under S. 24, C.P.C. to the courts concerned as observed earlier. After transmitting the case to the concerned courts as held above, the Court concerned is free to deal with those cases including passing appropriate orders on the interlocutory applications. A literal interpretation of S. 32(5) and S. 32(6) does not, in my view, lead to the conclusion that after transmission of the cases the Court concerned is precluded from passing appropriate orders on the interlocutory applications and that it is the District Court and the High Court alone which has to pass final orders on them. Such an interpretation would defeat sub-sec. (5) of S. 32.

20. I have held that S. 32(5) of the Act cannot be read in S. 33, therefore, the order passed by the High Court in vacation under S. 33 cannot be deemed to be

an order passed by the concerned Court. Hence, the interim orders which are passed by the High Court assailed in revisions will remain as the interim orders of the High Court. The High Court is one Court. It is misconceived to think that it is composed of as many courts as there are number of Judges. Art. 214 of the Constitution of India which says that there shall be a High Court for each State, dispels any such doubts. Merely because against the judgment of a single Judge an appeal is provided to a Bench of two Judges in certain situation a Judge of a High Court sitting single would not become Subordinate to the Division Bench and the order passed by a single Judge cannot be said to be an order passed by a Court subordinate to the High Court. I am supported in my view by opinion of a Division Bench of the Calcutta High Court in *Devendranath Das v. Bibudhendra Mansingh* ILR (1916) Cal 90:(AIR 1916 Cal 973). Speaking for the Court, Jenkins, C.J. observed thus:

"And here I may point out that a Judge sitting alone is not a Court subordinate to High Court, but performs a function directed to be performed by the High Court (Cl. 36 Letters Patent) And thus no decision of a single Judge can be revised under S. 115 of the Code."

21. From the above discussion it follows that against an order of a single Judge of the High Court revision under S. 115, C.P.C. is not maintainable.

22. The Second objection of Mr. Subrahmaniam to the maintainability of the civil revision petitions is that against the interim injunction in question, an appeal lies under O.43, R. 1(r), C.P.C. Reliance is placed on *Balaiah v. Aravindanagar Co-op. Housing Society*, (1980) 1 ALT 90 and *Reserve Bank of India Employees Association and Another Vs. The Reserve Bank of India and Others*, . The learned Advocate-General contended that since the cases arise out of arbitration proceedings, granting of interim order is governed by S. 41(b) read with Second Schedule of the Arbitration Act and as no appeal is provided against such an order by S. 39 of the Arbitration Act, the impugned orders are non-appealable, so, revision petitions are maintainable.

23. There is no dispute that the present controversy arises out of arbitration proceedings. A perusal of S. 41(b) and Item 4 of Second Schedule of the Arbitration Act makes it evident that in relation to arbitration proceedings, the Court has power to pass interim orders including orders of interim injunction. S. 39 of the Arbitration Act specifies appealable orders and it reads:

"39. Appealable orders. (1) An appeal shall lie from the following orders passed under this Act and from none others to the Court authorised by law to hear appeals from original decrees of the Court passing the order:

An order-

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;

- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
- (vi) setting aside or refusing to set aside an award;

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

24. Section 39 not only enumerates appealable orders but also ordains that from no other order an appeal shall lie to the Court authorised by law to hear appeals from original decrees of the Court passing the order.

25. In so far as our Court is concerned, it is well settled that an appeal lies against ex parte interim injunction granted under O.39, R. 1, C.P.C. The cases relied upon by Mr. Subrahmaniam do not relate to arbitration proceedings, so they are of no assistance to him. A catena of decisions took the view that no appeal lies against an order granting or refusing injunction under S. 41 read with Second Schedule of the Arbitration Act. (Vide The State of Himachal Pradesh and Another Vs. H.S. Sobti and Co., ; Sharma Ice Factory v. Jewel Ice Factory, AIR 1975 J & K 25 and Banwari Lal Radhey Mohan Vs. The Punjab State Co-operation Supply and Marketing Federation Ltd., . Notwithstanding the position that the orders in question are not appealable, revisions against them are not maintainable in view of my finding on the first contention of the respondent.

26. It is an admitted fact that the orders in question are only interim orders. The phrase "case decided" is now defined by Explanation added to S. 115, C.P.C. to include any order made or any order deciding an issue in the course of suit or other proceeding. In Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, the Supreme Court observed :

"But every order of the Court in the course of a suit does not amount to a case decided. A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of parties in controversy; every order in the suit cannot be regarded as a case decided" within the meaning of S. 115."

There should be adjudication of rights or obligations of the parties in the suit or (proceedings. Ex parte interim orders do not decide any rights or obligations of the parties, nay they are passed pending adjudication of rights or obligations in the interlocutory proceedings. Therefore, the orders in question do not decide the rights of the parties. It cannot, therefore, be said that by orders in question, case has been decided. For this reason also, the revisions against the orders in

question are not maintainable. It is open to the petitioner to file its counter affidavit in the Court of the Principal Subordinate Judge who is directed to pass appropriate orders after hearing both parties, as expeditiously as possible, keeping in view the provisions of R. 3A of O. 39, C.P.C.

27. In the view I have taken, I do not consider it necessary or desirable to decide the contention whether the orders in question are void for non-compliance of provisions of O.39, R. 3, C.P.C. and therefore, suffer from error of jurisdiction as it involves consideration of case on merits.

28. For these reasons, both the revision petitions are not maintainable and they are accordingly dismissed with costs.

29. Revisions dismissed.