

(2002) 07 GUJ CK 0082

In the Gujarat High Court

Case No : Civil Revision Application No. 863 of 2002

Parakramsingh Vikramsingh Jadeja and Others

APPELLANT

Vs

Yogi Corporation and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 32 , 32(2)

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 115, 115(1), 115(2)

Citation : (2002) 3 GLR 192

Hon'ble Judges : D.P. Buch, J

Bench : Single Bench

Advocate : Mihir H. Joshi, for Petitioner Nos. 1 to 11, for the Appellant; R.J. Oza, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Buch, J.—This is a Revision Application filed u/s 115 of the Civil Procedure Code, 1908, (for short "the Code") challenging the judgment and order recorded by the learned Jt. District Judge, Rajkot, on 1st July, 2002 in Misc. Civil Appeal No. 58 of 2002.

2. By the aforesaid judgment and order, the learned Jt. District Judge, Rajkot, dismissed Misc. Civil Appeal No. 57 of 2002 but allowed the Misc. Civil Appeal No. 58 of 2002 and directed that the order passed by the learned trial Judge below application Exh. 5 in Civil Suit No. 321 of 2001 be quashed and set aside and the said application Exh. 5 was ordered to be dismissed. The parties were made to suffer their own cost in both the appeals.

3. Before the appeals were filed, the petitioners, herein, had preferred Special Civil Suit No. 321 of 2001 and in the said suit they had submitted an application Exh. 5 for getting temporary relief preventing the first respondent from transferring the suit property and from dealing with the said property in any manner. It was further prayed that the first respondent be prevented from carrying out any construction on the said property till the disposal of the suit. It

was further prayed in the said application that the remaining respondents be prevented from transferring the said property to any person during the pendency of the said suit.

4. After hearing the learned Advocates for the parties, the learned trial Judge passed an order on 4-5-2002 directing that initial order passed by the said Court below the said application Exh. 5 on 31-12-2001 directing the defendants of the said suit to maintain status quo be confirmed till the disposal of the suit.

5. The learned Judge also imposed a condition that the said plaintiff shall pay in Court Rs. 50 lacs as deposit as discussed in the judgment within one month from the date of the order. It was further directed that if the plaintiff should fail to make such a payment within the stipulated period then the order of status quo granted as aforesaid should stand vacated forthwith and automatically without notice to them.

6. The plaintiff as well as defendant both preferred Misc. Civil Appeal Nos. 57 of 2002 and 58 of 2002. The learned Jt. District Judge heard two appeals together and decided the same by judgment and order dated 1-7-2002 as said hereinabove.

7. Feeling aggrieved by the said judgment and order of the learned Jt. District Judge, the petitioners being the original plaintiff in the said Civil Suit and also the appellants in Misc. Civil Appeal No. 57 of 2002 have preferred this Revision Application before this Court. It has been contended here that the learned Jt. District Judge has committed illegality in passing the final order without appreciating the legal and factual aspects presented before him. It is, therefore, prayed that the present Revision Application may be allowed and the judgment and order of the learned Jt. District Judge be quashed and set aside.

8. Learned Senior Advocate Mr. S.B. Vakil with Mr. R.J. Oja, appeared on Caveat and raised an objection that Civil Revision Application is not maintainable in view of the amended provision of Civil Procedure Code, which has come into force from 1-7-2002 on account of the CPC (Amendment) Act, 1999, Amending Act, for short.

9. In the meantime, it may be recorded that petitioner had preferred Appeal From Order to this Court as the suit was Special Civil Suit. However, it was noticed that the appeal was entertainable by the District Court and, therefore, the said Appeal From Order was disposed of here and accordingly the petitioners, herein, had preferred the aforesaid appeal before the District Court which has been referred hereinabove.

10. In view of the aforesaid contention about the maintainability of Revision Application raised on behalf of the respondent the matter was heard and Mr. S.B. Vakil, learned Senior Advocate, appearing with Mr. R.J. Oja, argued that the Revision Application is not maintainable in view of the amended provision of the Civil Procedure Code.

11. On the other hand, Mr. Mihir Joshi, learned Advocate, for the petitioners has also argued the matter at length saying that the amended provision of Civil Procedure Code, does not apply to the present proceeding. It has also been argued by him that even if the amended provisions of the CPC are made applicable to the present Revision Application, then also this is a Revision Application against an independent proceeding coming from the Misc. Civil Appeal, and therefore, the Revision Application is maintainable.

12. In view of the aforesaid position, some Advocates requested that they may also be heard. Accordingly at their request they were heard. Out of them Mr. S.M Shah, Mr. J.R. Nanavati, Mr. U.D. Shukla, Mr. S.K. Jhaveri, Mr. M.B. Patel, Mr. D.D. Vyas, Mr. P.V. Hathi and Mr. J.D. Ajmera, have argued the matter supporting the contention of Mr. Mihir Joshi, that the Revision Applications are maintainable.

13. On the other hand, Mr. Mihir Thakore and Mr. A.H. Mehta, learned Senior Advocates, have argued the matter at length saying that Revision Application against the judgment and order of the District Court in Misc. Civil Appeal under Order 43 of the Civil Procedure Code, is now not maintainable, and, therefore, Revision Application is required to be dismissed.

14. In aforesaid view of the matter, it is required to be considered if the Revision Application is maintainable in view of the provisions made in Section 115 of the CPC by Amending Act of 1999.

15. At the outset it would be worthwhile to reproduce Section 115 of the Civil Procedure Code, 1908, stood in the Text Book before 1st July, 2002. It would be worthwhile to refer the said text as follows :-

"Section 115(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 failed to exercise a jurisdiction so vested, or

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

(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.

[(3) 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 High Court.]"

16. Thereafter, the Parliament has amended the said provision of Section 115 of the Civil Procedure Code, and Section 12 of the Amending Act of 1999 under

which Section 115 of the Civil Procedure Code, 1908, has been amended reads as follows :

"12. Amendment of Section 115 :- In Section 115 of the Principal Act, in Sub-section (1),

(i) for the proviso, the following proviso shall be substituted, namely :-

"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 the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings".

(ii) After Sub-section (2), but before the Explanation, the following sub-section shall be inserted, namely :-

"(3) 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 High Court."

17. It is required to be considered that under the provision of Section 32 of the Amending Act of 1999 provision has been made to show as to the applicability of the amended provision of Section 115 of the said Code. With a view to understand the scheme of applicability of amended provision of Civil Procedure Code, it would be necessary to reproduce Section 32 of the CPC (Amendment) Act, 1999 as follows :

"32. Repeal and savings :-- (1) Any amendment made, or any provision inserted in the Principal Act by a State Legislature or High Court before the commencement of this Act shall, except insofar as such amendment or provisions is consistent with the provisions of the Principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (X of 1897).--

(a) the provisions of Section 26 of the Principal Act and Order IV of the First Schedule, as amended by Sections 2 and 14 of this Act, shall not apply to or affect any suit pending immediately before the commencement of Sections 2 and 14; and every such suit shall be tried as if Sections 2 and 14 had not come into force;

(b) the provisions of Section 27 of the Principal Act, as amended by Section 3 of this Act, shall not apply to or affect any suit pending immediately before the commencement of Section 3 and every such suit shall be tried as if Section 3 had not come into force;

(c) the provisions of Section 58 of the Principal Act, as amended by Section 5 of this Act, shall not apply to or affect any person detained in the civil prison in

execution of a decree before the commencement of Section 5;

(d) the provisions of Section 60 of the Principal Act, as amended by Section 6 of this Act, shall not exempt salary from attachment to the extent mentioned in Clause (i) of the first proviso to Sub-section (1) of Section 60 before the commencement of Section 6;

(e) Section 89 and Rules 1A, 1B and 1C of Order X of the First Schedule, as inserted in the Principal Act by Sections 7 and 20 of this Act, shall not affect any suit in which issues have been settled before the commencement of Section 7; and every such suit shall be dealt with as if Sections 7 and 20 had not come into force;

(f) the provisions of Section 96 of the Principal Act, as amended by Section 9 of this Act, shall not apply to or affect any appeal from original decree which had been admitted before the commencement of Section 9; and every admitted appeal shall be dealt with as if Section 9 had not come into force;

(g) the provisions of Section 100A of the Principal Act, as substituted by Section 10 of this Act, shall not apply to or affect any appeal against the decision of a single Judge or a High Court under Article 226 or Article 227 of the Constitution which had been admitted before the commencement of Section 10; and every such admitted appeal shall be disposed of as if Section 10 had not come into force;

(h) the provisions of Section 102 of the Principal Act, as substituted by Section 11 of this Act, shall not apply to or affect any appeal which had been admitted before the commencement of Section 11; and every such appeal shall be disposed of as if Section 11 had not come into force;

(i) the provisions of Section 115 of the Principal Act, shall not apply to or affect any proceeding for revision which had been finally disposed of;

(j) the provisions of Rules 1, 2, 6, 7, 9, 9A, 19A, 21, 24 and 25 of Order V of the First Schedule as amended or as the case may be, inserted or omitted by Section 15 of this Act shall not apply to any summons issued immediately before the commencement of Section 15.

(k) the provisions of Rules 9, 11, 14, 15 and 18 of Order VII of the First Schedule, as amended or as the case may be, substituted or amended by Section 17 of this Act, shall not apply to in respect of any proceedings pending before the commencement of Section 17;

(l) the provisions of Rules 1 and 1A of Order VIII of the First Schedule, as substituted or inserted by Section 18 of this Act, shall not apply to a written statement filed and presented before the Court immediately before the commencement of Section 18;

(m) the provisions of Rules 2 and 5 of Order IX of the First Schedule, as amended by Section 19 of this Act, shall not apply in respect of summons issued

before the commencement of Section 19;

(n) the provisions of Rules 2 and 15 of Order XI of the First Schedule, as amended by Section 21 of this Act, shall not apply to or affect any order passed by the Court or any application submitted for inspection to the Court before the commencement of Section 21 of this Act;

(o) the provisions of Rules 2 and 4 of Order XII of the First Schedule, as amended and omitted, as the case may be, by Section 22 of this Act, shall not affect any notice given by the party or any order made by the Court before the commencement of Section 22 of this Act;

(p) the provisions of Rules 1 and 2 of Order XIII of the First Schedule, as substituted by Section 23 of this Act, shall not affect the documents produced by the parties or ordered by the Court to be produced before the commencement of Section 23 of this Act;

(q) the provisions of Rules 4 and 5 of Order XIV of the First Schedule, as amended and omitted by Section 24 of this Act, shall not affect any order made by the Court adjoining the framing of the issue and amending and striking out issues before the commencement of Section 24 of this Act;

(r) the provisions of Rules 1 and 2 of Order XVI of the First Schedule, as amended by Section 25 of this Act, shall not affect any application made for summoning of witnesses and time granted to a party to deposit amount for summoning witnesses made by the Court before the commencement of Section 25;

(s) the provisions of Rule 1 of Order XVII of the First Schedule, as amended by Section 25 of this Act, shall not affect any adjournment granted by the Court and any cost occasioned by the adjournment granted by the Court before the commencement of Section 25 and the number of adjournments granted earlier shall not be counted for such purpose;

(t) the provisions of Rules 1, 6A and 6B of Order XX of the First Schedule, as amended and substituted by Section 28 of this Act, shall not affect any application for obtaining copy of decree for filing of appeal made by a party and any appeal filed before the commencement of Section 28 of this Act; and every application made and every appeal filed before the commencement of Section 28 shall be dealt with as if Section 28 had not come into force;

(u) in Sub-rule (2) of Rule 1 of Order XXXIX of the First Schedule, as inserted by Section 30 of this Act, shall not affect any temporary injunction granted before the commencement of Section 30 of this Act.

(v) the provisions of Rules 1, 9, 11, 12, 13, 15, 18, 19 and 22 of Order XLI of the First Schedule, as amended, substituted and omitted, as the case may be, by Clause 32 of the Bill shall not affect any appeal filed before the commencement of Section 32; and every appeal pending before the commencement of Section

32 shall be disposed of as if Section 32 of this Bill had not come into force."

18. Now, so far the learned Advocate for the petitioners is concerned he has also submitted narration of his submission in brief in writing, and therefore, it would also be proper to keep those submissions on record with a view to complete this judgment. It is reproduced as follows :

"In the event the order contemplated in Section 115 of the C.P.C. is the order passed in the first instance by the trial Court.

1. The word "proceedings" in the proviso to Section 115(1) takes within its sweep interlocutory proceedings which is evident inter alia from the following :

a. The Explanation to Section 115, inserted by Act 104 of 1976, clarifying that the expression "any case which has been decided" in Section 115, includes any order made in the course of a suit or other proceedings, clarifies that interlocutory orders can be subjected to revision under the said Section if the same decide any case.

b. Section 141 of the C.P.C. prescribes that the procedure provided in the Code in regard to suits should be followed in all proceedings in any Court of civil jurisdiction and the expression "proceedings" includes proceedings under Order IX, which further indicates that the term proceedings is all encompassing.

c. Interim orders and more particularly orders under Order XXXIX Rules 1 and 2 of the C.P.C. have been held to be revisable under the unamended provisions of this Section, which position has not been altered by the amendment, and therefore, there is no justification for restricting the ambit of the term proceedings, after the amendment.

d. In Ravindra Bal Niketan Samiti, Sikar and Others Vs. Smt. Sushila Shrivastava and Another, , it has been held that the word "includes" enlarges the scope of Section 141 C.P.C. and proceedings of a miscellaneous nature which arise in a suit fall within a definition of Section 141 C.P.C. In AIR 1999 Ori 81, it has been held, relying upon judgments of the Apex Court that (Paras 9 and 12 to 16) that the term "proceedings" is a comprehensive term and means a prescribed course of action for enforcing the legal right. It quotes with approval the definition in Black's Law Dictionary the proceedings..... includes all possible steps in an action from its commencement, to the execution of judgment.

2. The word "proceedings" does not take its colour from the proceeding expression "suit" occurring in the proviso to Section 115(1) and the principle of ejusdem generis has no application, which is evident inter alia from the following :

a. The expression "suit" used in the proviso by itself, without any other terms of like nature, militates against restricting the ambit of "proceedings" to those similar to a suit, since the legislature has not denoted a class/ family whose attributes must be shared by "proceedings",

b. The legislature has avoided the use of the words "such", "similar" or "like" prefixing the term "proceedings" which also indicates that the term proceedings has to be given full play.

c. In Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., , it has been held that the principle of ejusdem generis need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted there must be genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted. In G.S.L. (INDIA) Ltd. Vs. Bayers ABS Ltd., , it has been held that in order to apply the said rule for restricting the broad meaning which the word used by the legislature otherwise conveys in general, there must be a distinct genus. It must accompany more than one specie of the same genus for application of the rule. The enumerated things before the general words must constitute a category or a genus or a family of which there must be a number of species or members.

In Grasim Industries Ltd. Vs. Collector of Customs, Bombay, , it has been held that the said rule has to be applied with care and caution and applies only when the statute enumerates the specific words, the subjects of enumeration constitute a class or category, that class or category is not exhausted by the enumeration, the general terms follow the enumeration, and there is no indication of a different legislative intent. If the proceeding words constitute a description of a complete genus, the rule has no application.

3. In any case the proviso to Section 115(1) does not denude the Court of jurisdiction to examine the legality and validity of an interlocutory order on the touchstone of Clauses (a), (b) and (c) of Section 115(1), but only restricts discretion while making the final order.

a. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, . The proviso cannot possibly deal with an entirely different topic or subject S.C. Cambatta and Co. Ltd. Vs. Commissioner of Income Tax, and is subservient to the main provision South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others, .

b. It is also well settled that once the conditions in Section 115 are satisfied and the High Court's jurisdiction to interfere is established, the proceedings as a whole, from start to finish can be scrutinised and any order necessary for doing justice may be passed and there is no limit to the mode in which the power is exercisable.

c. In the context of the above propositions the proviso to Section 115(1) does not denude the Court of jurisdiction to entertain a revision against an interlocutory order even if such order, if made in favour of the party applying for

revision, would not have finally disposed of the suit or other proceedings and the Court also has the jurisdiction to make such order in the case as it thinks fit. However the power to make such orders is truncated by the proviso which stipulates that the Court shall not vary or reverse any order made in the course of a suit/proceedings except where the order if made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. Except varying or reversing the impugned order the High Court is competent to make such orders in the case as it thinks fit (Finally disposing of the matter on merits, ordering a remand, setting aside an ex-parte decree in revision, investigating whether order of the trial Court itself was legal and valid, expediting the suit etc.). It cannot therefore be said that no revision at all lies against an interim order. Moreover, the proviso will come into play at the time of making the final order on the revision.

4. Once the revision petitioner establishes that the impugned order constitutes (1) a case decided by any Court subordinate to the High Court, (2) in which no appeal lies to the High Court, (3) where the subordinate Court appears to have exercised jurisdiction not vested in it, or fails to exercise jurisdiction so vested or exercises jurisdiction illegally and with material irregularity, a revision would be maintainable. However, for an order varying or reversing any interlocutory order, the revision petitioner must further establish only that the order, if made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. It is not permissible to incorporate an additional test that the impugned order should not have disposed of the suit or proceedings, which is evident from :

a. *Grasim Industries Ltd. Vs. Collector of Customs, Bombay*, wherein it has been held that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens of the legislature. Where the words are clear and there is no obscurity, there is no scope for the Court to take upon itself the task of amending or altering the statutory provisions. Wherever the language is clear the intention is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided.

In *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, it has been held that where the language of the statute is plain and unambiguous, it is not open to the Court to read into it limitation which are not there, based on a priori reasonings as to the probable intention of the legislature. Such intention can be gathered only from the words actually used in the statute and in a Court of law what is unexpressed has the same value as what is unintended (Para 25).

Alternative II E

In the event of the order contemplated in Section 115 of the C.P.C., is the order passed by the lower appellate Court.

1. In a revision petition, what is called in question is the legality and validity of an order passed by any Court subordinate to the High Court and in which no appeal lies thereto. This could include :

a. Orders passed by the trial Court which are not appealable under Order XLIII Rule 1 of the C.P.C., namely orders under Rule 10A of Order VII, under Order XXVI, under order XXXVII Rules 3 & 4 under Order XXXVIII Rule 5 etc.

b. Orders/decrees passed by the lower appellate Court in its appellate jurisdiction (Section 8) of the Bombay Civil Courts Act, 1869 against which no further appeal lies to the High Court.

2. In Clause (b) above, the order complained of is the judgment and order of the lower appellate Court and not the trial Court which is evident inter alia from Rule 44 of the Gujarat High Court Rules, 1993.

3. The limitations in the exercise of revisional jurisdiction prescribed by the legislature u/s 115 of the Code must be read with reference to such order of the lower appellate Court.

4. Therefore, as stated above once the revision petitioner establishes that the impugned order constitutes : (1) a case decided by any Court subordinate to the High Court, (2) in which no appeal lies to the High Court, (3) where the subordinate Court appears to have exercise jurisdiction not vested in it, or fails to exercise jurisdiction so vested or exercises jurisdiction illegally and with material irregularity, a revision would be maintainable.

5. As stated above it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. The proviso is clearly applicable only when the High Court varies or reverses any order made, or any order deciding an issue, in the course of a suit or other proceedings.

In Commissioner of Income Tax, New Delhi (Now Rajasthan) Vs. East West Import and Export (P) Ltd., (Now Known as Asian Distributors Ltd.), Jaipur, , it has been held that "course" ordinarily conveys the meaning of a continuous progress from one point to the next and conveys the idea of a period of time, duration.

In 1996 SCC 1, it has been held that the dictionary meaning of "in the course of" is during, while doing.

The necessary amendment was made in Section 115 by Act 104 of 1976 by adding a proviso to Sub-section (1) and the Explanation, thereby incorporating the phrase "in the course of a suit or other proceeding", to clarify that interlocutory orders may be challenged if within the definition of a case decided.

6. Therefore, when the order sought to be revised is not in the course of a suit or other proceedings but the culmination thereof, the proviso itself is inapplicable. In this context, the only test is whether the order of the lower Court is a case decided and the question of interpretation of the term "proceedings" does not at all arise."

19. It has been mainly contended by the learned Advocate for the petitioner that Section 115 of the Code is based on the words "case which has been decided". It is true that the said part of Section 115 of the Civil Procedure Code, has not been amended by Amending Act, 1999. The words "in case which has been decided" were there before 1-7-2002 and they have been continued and retained to be there even in the Amending Act, 1999, w.e.f. 1-7-2002 and there is no dispute about the same. This can be gathered from the text of the amended provision of Section 115 of the Code. It has, therefore, been contended by the learned Advocate for the petitioner that the word "in case which has been decided" has been interpreted in past in so many cases and the impugned order in this Revision Application forms part of the case decided, and therefore, the Revision Application will lie and it will be legally permissible for this Court to entertain this Revision Application.

20. It has then been contended that apart from the said words "case decided" the text of Sub-section (1) of Section 115 also requires three ingredients to be satisfied by the applicant coming with a Revision Application and they are enumerated in Clauses (a), (b) and (c) to Sub-section (1) of Section 115 of the Code. These provisions were also there in the earlier enactment and these provisions are still there in the present enactment even after the amendment and there is no dispute about the same also. This means that these Clauses (a), (b) and (c) to Sub-section (1) of Section 115 have remained in text book unamended and without any change. There is no serious dispute about this aspect also.

21. Then so far as proviso is concerned, if we look at the earlier provision of the proviso to Sub-section (1) of Section 115 of the said Code, it would be clear that earlier, the proviso was containing two parts (i) and (ii). However, after the amendment, (i) part of the proviso had been mixed up in the text of the proviso itself, whereas the part containing in part (ii) of the earlier enactment has been done away with and that has been struck off from the text book. In other words, there were two parts of the proviso in the Enactment of 1976, which is in force since 1st February, 1977. Even in the present case second part has been deleted and only first part has remained in text book, which form, the part of the proviso itself. The old text as well as the new text have been reproduced for ready reference hereinabove.

22. The learned Advocate for the petitioner has argued at length that as the words "case decided" were there in the earlier provision of Section 115 and since they have been continued even at present, there is no material change in the law applicable to the present Civil Revision Application, and therefore, the Court

should decide the issue on the strength of the terms "case decided". It is also his case that it is a settled provision of law that the word "case decided" includes the present order impugned in Revision Application.

23. As against this Mr. S.B. Vakil, learned Senior Advocate appearing for the respondent has, at length, argued that the word "case decided" is now required to be considered in light of the proviso to Sub-section (1) of Section 115 of the Code as it stands now after the Amendment Act, 1999. It is his contention that initially there were two parts in the provisions and one of them was that in case of a failure of justice the Court could entertain the Revision Application. It is also his argument that now that "failure" part has been taken away from the text book and, therefore, the Court cannot entertain its jurisdiction in the Revision Application on the ground that there was failure of justice or there is likelihood of failure of justice if the Revision Application is not allowed.

24. The learned Senior Advocate for the respondent has also argued that the test of the proviso is very clear. According to him revisionist-petitioner is further required to show that if the order impugned in the Revision Application was passed in favour of the revisionist-petitioner then it would have disposed of the suit or other proceeding. It is, therefore, his contention that if this query is answered by the revisionist-petitioner then the Revision Application would be entertainable. On the other hand, it is also his contention that if the answer falls in negative then the Court cannot entertain such a Revision Application. Therefore, according to his contention the Court should apply the said test by putting a query to the petitioner as to whether the suit or other proceedings would have been disposed of if the order had been passed in favour of the petitioner coming with a Revision Application.

25. The learned Advocate for the petitioner has argued at this stage that the word "proceeding" includes an order passed during a proceeding which may be a suit or other proceeding. Therefore, according to him even an order passed under Order 39 of the Civil Procedure Code, by the trial Court would be a proceeding in the suit, and therefore, an appeal under Order 43 decided against an order passed on application filed under Order 39 of the CPC would also be a proceeding, and therefore, a Revision Application would lie u/s 115 of the CPC even after the amendment against such a judgment/order. Therefore, the word "proceeding" is also required to be construed in a proper way.

26. In a case of Mayadhar Mallik v. Smt. Laxmi Mallik, reported in AIR 1999 Ori 81, the word "proceeding" has been considered. There it has been observed that the word "proceeding" which is a very general one and in common parlance would mean "going forward". When used in connection with any legal matter, it would generally mean, "prescribed mode of action for carrying into effect a legal right". It is further observed that, thus, to start a proceeding against some one would mean, "to start a legal action against him". In other words, any steps in a particular matter is a proceeding, and therefore, according to the argument of the learned Advocate for the petitioner, even an application for temporary relief

under Order 39 of the CPC is also a proceeding for the purpose of Section 115 of the Civil Procedure Code.

27. The words "other proceeding" have also been discussed in a case of Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., . There it has been observed as follows :

"The expression "claim of set off" in Section 69(3) of the Partnership Act does not disclose a category or a genus. The words "other proceeding" which follow, must therefore, receive their full meaning untrammelled by the words "a claim of set off. The latter words neither intend nor can be construed to cut down the generality of the words "other proceeding". The Sub-section provides for the application of the provisions of the provisions of Sub-sections (1) and (2) to claims of set off and also to other proceedings of any kind which can properly be said to be for enforcement of any right arising from contract except those expressly mentioned as exceptions in Sub-section (3) and Sub-sec. (4). Where, therefore a partner of an unregistered partnership applies u/s 8(2) of the Arbitration Act to enforce a right arising from a contract between the partners, the proceedings are barred by Section 69(3) of the Partnership Act, Kajaria Traders (India) Ltd. Vs. Foreign Import and Export Association, . (S) Ram Lal Harnam Dass Vs. Bal Krishen and Others, , Overruled."

28. Again the words "in suit or proceeding" were required to be considered in a case of G.S.L. (INDIA) Ltd. Vs. Bayers ABS Ltd., . There it has been observed that the contention of the learned Senior Advocate for the petitioner that the word "proceedings" should be given a narrower meaning confining it to civil proceedings and exclude criminal proceedings, by invoking maxim *noscitur a sociis* and *ejusdem generis* cannot be accepted and the same is overruled. It is further observed in it that the word "proceedings" u/s 442 cannot be interpreted in a manner to exclude criminal proceedings pending in a Court from its purview.

29. In the said decision the principle of *ejusdem generis* has also been discussed and observation in Para 32 is as follows :

"The principal rule of *ejusdem generis* is one of the species of wider rule *noscitur a sociis* and is an application of the maxim. According to Maxwell this rule means that when two or more words which are susceptible of analogous meaning are coupled together; they are understood to be used in the cognate sense. They take as it were their colour from each other that is the more general is restricted to a sense analogous to a less general."

30. The learned Advocate for the petitioner has also referred a decision of Grasim Industries Ltd. Vs. Collector of Customs, Bombay, . The pertinent observation with respect to *ejusdem generis* may be reproduced for ready reference as follows :

"The rule of *ejusdem generis* is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case, the

general words are construed as limited to things of the same kind as those specified. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. If the subjects of enumeration belong to a broad-based genus, as also to a narrower genus, there is no principle that the general words should be confined to the narrower genus."

31. In the decision of South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others, , the Hon"ble Apex Court has considered the applicability of a proviso to a Section or a sub-section to be sub-servient to the main provision. It is also observed in it that it is trite saying that the object of interpreting a statute is to ascertain the intention of the legislature enacting it, an interpretation defeating the object of a statute is, of course, not permissible.

32. Attempts were made to show that the word "proceedings" used in Section 115 before and after the Amendment Act goes to show that any proceeding during the course of a proceeding is also a proceeding, and therefore an application submitted for interim relief under Order 39 of the Code and an order in such an application would also be a proceeding for the purpose of Section 115, and therefore, even if it is considered that the proviso is applicable to the present Revision Application, the Revision would be maintainable.

33. Now, it is very clear that the Parliament since beginning has used the word suit or proceeding in the proviso to Sub-section (1) of Sec, 115 of the Code. The said provision was there even before the Amendment was made in 1999 and it is there even at present after the Amendment of 1999. The words used are "suit or other proceeding". It has, therefore, been canvassed on behalf of the petitioner that either it may be a suit or it may be a proceeding, but an order passed in a suit or a proceeding will be revisable by this Court.

34. If we closely read the proviso to Section 115 of the Code, as it stands today after the amendment, it provides for any order deciding an issue in the course of a suit or other proceedings. The plain reading would be "any order deciding an issue in the course of suit "or" any order deciding an issue in the course of other proceedings". In other words, the order in question must have been passed during the course of a suit or during the course of other proceedings.

35. If the order has been passed not during the course of suit or not during the course of any proceeding, then it may not be an order falling within the four corners of the proviso to Sub-section (1) of Section 115 of the Code.

36. It is true that an order passed below interim relief application under Order 39 is a part of the suit and it is being passed during the course of a suit. The question is as to whether it can be treated to be one which would be revisable in

view of the proviso to Sub-section (1) of Section 115 of the Code.

37. The second requirement of the proviso is that the High Court shall not, under this Section, alter or reverse any order made, or any order deciding the issue in the course of suit or other proceedings, except where the order, if it had been made in favour of the parties applying for Revision, would have finally disposed of the suit or proceedings.

38. This provision requires that when a Revision Application is filed against the order which has been passed during the course of a suit or other proceedings then the said order must be such that if it had been passed in favour of the revisionist-petitioner, then it would have disposed of the suit or other proceedings.

39. Now, if we take the example of the present matter in which the Revision Application has been filed against the judgment and order of the District Court under Order 43 of the Civil Procedure Code, a question would arise as to whether the order if was passed in favour of the present petitioner, it would have disposed of the suit or other proceedings?

40. An attempt was made to show that if the order was passed in favour of the revisionist-petitioner then it would have disposed of the interim relief application Exh. 5 pending before the trial Court finally, and therefore, it would amount to be an order in course other proceedings.

41. At the same time, it would be worthwhile to refer to a decision of Vishnu Awatar Vs. Shiv Autar and Others, . It would be relevant to consider here that the provision contained in Section 115 of the Code, was amended by the U.P. State. There a question had arisen as to what would be the meaning of words "other proceedings" in Section 115 of the Code. It has been observed in Para 6 at page 1577 as follows :

"The words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added in order to bring within the purview of the revisional jurisdiction orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings: have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions."

42. The above interpretation of the term "other proceedings" makes it clear that the legislature really wanted to include only those proceedings which could be treated to be original proceedings and not proceedings in a proceeding.

43. Naturally, an application under Order 39 of the Code is a proceeding in a suit and it is not a separate proceeding by itself.

44. When the interim relief application is not an independent proceeding by itself

but it is a part and parcel of the Civil Suit, then in that event it cannot be said that an order passed in appeal against the order passed on such interim relief application is a separate proceeding against which Revision would lie. An order passed in an appeal under Order 43 of the Code in a Misc. Civil Appeal would also be a part and parcel of the suit and it cannot be termed as an independent proceeding with a view to attract the proviso to Sub-section (1) Section 115 of the Code.

45. Another aspect of the case is that the proceeding itself is not covered by the proviso. It must be a proceeding in proceeding. In other words, it must be a proceeding in a suit or a proceeding in other proceedings. Unless the order has been passed in a suit or in any other proceeding the order would not be revisable u/s 115 of the Code, in view of the proviso attached to the said Section.

46. It is very difficult to accept that the judgment and order in Misc. Civil Appeal filed under Order 43 of the Civil Procedure Code, can be treated to be a separate independent proceeding. It is required to be considered that the foundation of a Misc. Civil Appeal under Order 43 of the CPC can be gathered from the original application which is clearly described and popularly known as Exh. 5 application. It is a fact that a Misc. Civil Appeal would lie against an interim order passed under Order 39 of the Civil Procedure Code. An order under Order 39 of the CPC can be passed only on an application filed during the course of suit and/or other proceedings. Therefore, an application Exh. 5 or an application which can be termed as interim application is always an interim application filed during the course of suit or other proceedings. In other words, the application itself is not an independent proceeding but is always subject to the final decision of the suit or other proceedings. Therefore, when an application Exh. 5 or interim relief application and the order thereon are not independent separate proceeding, then in that event an appeal against the order passed on such an application under Order 43 of the CPC cannot be treated to be an independent separate proceeding when an appeal under Order 43 cannot be treated to be a separate Civil proceeding, then the judgment and order recorded by the Court disposing of such an appeal cannot be treated to be a separate judicial proceeding. Therefore, it is not possible for this Court to accept that the judgment and order of the District Court recorded in Misc. Civil Appeal filed under Order 43 of the Civil Procedure Code, should be treated to be a separate independent judicial proceeding.

47. When it is found that the judgment and order of a District Court passed in an appeal under Order 43 of the CPC is not an independent separate judicial proceeding then in that case the provision contained in Sub-section (1) of Section 115 of the Civil Procedure Code, alone will not come into play but the proviso to Sub-section (1) of Section 115 will be attracted. Therefore, it would not be possible for this Court to read Sub-section (1) of Section 115 of the CPC in isolation from the proviso attached to it. In other words, the proviso to Sub-section (1) of Section 115 of the Code will be required to be read along with Sub-

section (1) of Section 115 of the said Code. Therefore, it will be necessary to consider as to whether the impugned order will fall within the provision of the proviso to Sub-section (1) of Section 115 of the Code.

48. The proviso has been reproduced for ready reference hereinabove. It is clearly shown in it that "the High Court shall not vary or reverse any order made or any order deciding an issue, in the course of a suit or other proceeding". It would mean that the order, if it had been made in favour of the party applying for Revision, would have finally disposed of the suit or proceeding.

49. As discussed hereinabove the word "other proceedings" have to be construed as other separate independent civil proceeding and not a proceeding in proceeding. Therefore, I am of the opinion that an application under Order 39 of the Code, which is relevant for the purpose of this Revision Application, cannot be treated to be "other proceeding" as envisaged in the proviso to Sub-section (1) of Section 115 of the Code.

50. When an application under Order 39 of the Code, cannot be treated to be "other proceeding" for the purpose of the said proviso, then any order passed thereon cannot be treated to be an order passed in "other proceeding" for the purpose of said proviso. In that event, judgment and order passed in an appeal filed under Order 43 of the Code against such an interlocutory order under Order 39 of the Code, cannot be treated to be other Civil proceeding within the meaning of said proviso to Sub-section (1) of Section 115 of the Code.

51. In fact, the proviso has to be read as, "an order in the course of a suit or an order in the course of other proceedings". It would mean that the order which is impugned in Revision Application must be an order either in the course of a suit or in the course of other proceedings.

52. As said above, other proceedings would mean, other separate independent proceedings. Therefore, if an order has been passed during the pendency of a suit, it has to be construed accordingly.

53. Another requirement for the applicability of the proviso to Sub-section (1) of Section 115 is that the said order should be such that if the said order was passed in favour of the revisionist then the said order would have finally disposed of such a suit or such other proceeding, as the case may be.

54. In other words, it can be said that if the Revision Application is allowed by this Court then the judgment and order of this Court allowing the Revision Application would result in final disposal of the suit or other proceedings.

55. Suppose the present Revision Application is allowed and the judgment and order passed in a Misc. Civil Appeal filed under Order 43 of the CPC are set aside, then also the suit will remain there and it will not be disposed of. Therefore, the judgments and orders which are impugned in this Revision Application are not such which would dispose of the suit, if the said judgment and order were in favour of the revisionist. In that view of the matter, the requirement of the said

provision of the proviso to Sub-section (1) of Section 115 cannot be said to have been complied with and if that is so, the Revision Application against such a judgment and order would not be maintainable.

56. In my reading of newly amended Section 115 of Code, the Court will be required to examine a Revision Application in the following order :

(1) It has to first consider as to whether the impugned order is a non-appealable order since an appealable order cannot be carried in a Revision Application which is a pre-condition of applicability of Section 115 of the Code.

(2) Whether there is a "case decided", since it is also a pre- condition for application of Section 115 of the Code. If there is no "case decided" then it would not be open to the Court exercising revisional jurisdiction to exercise the same.

(3) Whether the revisionist show that three grounds mentioned at Clause (a), (b) and (c) or any of them mentioned in Sub-section (1) of Section 115 exists. The reason is that a Revision Application can be entertained only when at least one of those requirements or ingredients is present. If none is present, Revision Application cannot be entertained. Therefore, it would be necessary for the Court to examine whether the three grounds or any of them is in existence.

(4) Whether the order impugned in a Revision Application is an order passed during the course of a suit or during the course of other original independent civil proceeding.

(5) Whether the impugned order, if it had been made in favour of the revisionist, would have finally disposed of the suit or other proceeding.

57. Unless the above exercise is undertaken it would not be possible to properly apply the amended provision of Section 115 of the said Code.

58. If the said exercise is undertaken in the present matter then let us assume for the sake of argument that there is a "case decided", there is non-appealable judgment/order, there is existence of the ingredients mentioned at Clauses (a), (b) and (c) of Sub-section (1) of Section 115 of the Code and that the order in question is an order passed during the course of the suit. Then also, the last requirement that the order should be such as would have finally disposed of the suit if it had been passed in favour of the revisionist is missing.

59. As said above, the judgments and orders are such which if would have been passed in favour of the present Revisionist then also such a judgment or order would not have finally disposed of the suit in question. Therefore, the last requirement cannot be said to have been satisfied and, therefore, Revision would not be maintainable.

60. An attempt has also been made to show that there is an explanation at the bottom of Section 115 of the Code, which reads as follows :

"Explanation : In this Section, the expression "any case which has been decided"

includes anyn order made or any order deciding an issue, in the course of a suit or other proceeding."

61. The said explanation shows as to what can be stated to be "case decided". I think there is no dispute about the said explanation and the applicability thereof. Therefore, I have taken it for granted that even in the present Revision Application it can be said that there is a case decided, but simply because there is a case decided it would not mean that the Court can exercise revisional jurisdiction. The Court has to go into the proviso referred above and even if the case is decided then also requirement contained in the proviso has not been satisfied, and therefore, even if it is a case decided a Revision Application will not be tenable on account of the applicability of the proviso in question.

62. It is interesting to note here that the words "case decided" appearing in Sub-section (1) of Section 115 of the Code are missing in the proviso in question and there the words are "suit or other proceedings". Therefore, the meaning of the words "case decided" appearing in Sub-section (1) of Section 115 of the Code cannot be projected or read in the proviso. In other words, the two words "case decided" and "other proceedings" have been used in Section 115 of the Code in a different context.

63. It is required to be considered as stated hereinabove that in the past Revision Applications were being entertained on account of Clause (b) of Sub-section (1) of Section 115 of the Code which reads as follows :

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

64. Therefore, in view of the above provision made in the said Code at the relevant point of time, the Revision Applications were being entertained on the ground that the order if allowed to stand, was likely to occasion failure of justice or it was likely to cause irreparable injury to the applicant.

65. Now, that pan of the provision contained in Clause (b) has been done away with and instead, Clause (a) has been mixed up with the main part of the proviso, and therefore, it is very clear that the Parliament has now been intending to see that the Revision Applications are not entertained by this Court on the ground of failure of justice or on the ground of irreparable injury to the applicant, who sets the Court of Revision to motion.

66. In other words, now the Parliament requires this Court to entertain Revision Application only if it fails within the four corners of the proviso to Sub-section (1) of Section 115 of the Code. In other words, it would not be open now to this Court to entertain Revision Application on the ground of failure of justice or irreparable injury to the Revisionist.

67. An attempt has been made to seek cover u/s 141 of the Code. A provision has been made in it that the procedure provided in the Code with regard to the suit should be followed in all proceedings in any Court of Civil jurisdiction and the

expression "proceedings" includes proceedings under Order 9.

68. As said above the word proceeding has been separated from the suit by saying "suit and other proceedings". Considering the way in which the said terms have been used, it is amply clear that the proceedings which are shown in the proviso to Sub-section (1) of Section 115 of the Code are the original independent proceedings and that has been considered and decided by the Hon"ble Apex Court as referred to hereinabove. Therefore, it would not be open now to the petitioner to say that an application under Order 39 of Code and the judgment and order passed by the District Court on an order below the said application Exh. 5 should be treated to be other proceedings for the purpose of said proviso,

69. It has also been contended that interim orders, and more particularly orders under Order 39, Rules 1 and 2 of the Code have been held to be revisable under the unamended provision of Section 115 of the Code, which position has not been altered by the amendment, and therefore, there is no justification for restricting the term "proceedings" after the amendment.

70. Even this argument is not acceptable inasmuch as in the past the Revision Applications were entertained mainly on the ground of failure of justice, which ground has been taken away by the present amendment.

71. The decision in Ravindra Bal Niketan Samiti, Sikar and Others Vs. Smt. Sushila Shrivastava and Another, , is on a different aspects, not applicable to the facts of the case on hand.

72. The term "proceedings" in Family Courts Act, 1984 was discussed and explained in the light of its own back-ground in M. Mallik v. Smt. Laxmi Mallik in AIR 1999 Ori 81. It cannot be projected in Section 115 of the Code. Same is the case of a decision of Jagdish Chander Gupta Vs. Kajaria Traders (India) Ltd., .

73. It has further been argued that it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso. South Asia Industries Private Ltd. Vs. S. Sarup Singh and Others, was referred in support of this arguments.

74. Even if this interpretation is taken into account, it is very clear that by putting the aforesaid proviso to Sub-section (1) of Section 115 of the Code, the Parliament has very clearly expressed and demonstrated its intention about the applicability of Sub-section (1) of Section 115 in the Code. Therefore, by putting this proviso, an explanation has been carved out to the main provision to which it has been enacted. It does not deal with entire different topic or subject. It should be treated to be a subservient to the main provision. So, even if these decisions and this argument are accepted, then also the position would not be changed.

75. It is further argued that it is well settled that once the conditions of Section 115 are satisfied and High Court's jurisdiction to entertain Revision is

established, the proceeding as a whole, from start to finish can be scrutinised and any order necessary for doing justice may be passed and there is no limit on the power of this Court.

76. There cannot be dispute about this sort of power to be exercised by this Court. However, the first requirement is that there must be satisfaction of requirement of Section 115. In the present case, we find that once we read the provision as amended by 1999 Amendment, a requirement thereto cannot be said to have been satisfied, and therefore, even if this argument is accepted, the position would not be different.

77. It has further been argued that the provision contained in Section 115(1) of the Code does not change the jurisdiction to entertain Revision against an interlocutory order. Considering the proviso as amended, this argument is not acceptable.

78. An attempt was made to argue that without reversing or modifying the order impugned in the Revision Application, this Court can issue direction for early disposal of the suit also. For exercising such a power a Revision Application is never necessary. The party can make an application to the "Court concerned for expeditious disposal of the suit or other proceedings. If for one reason or the other, the Court below does not expedite the disposal of the matter, then similar application can be submitted before the District Judge, who is administrative head of the District, since the Civil Judges are administratively subordinate to him. The District Judge can issue appropriate direction to the Court concerned for expeditious disposal of the suit or group of cases. Even if that is not done, even administrative application can be made to the High Court and on administrative side the High Court can also issue appropriate direction for early disposal of the suit. In fact, the High Court has exercised this jurisdiction for issue of direction for early disposal of special types of cases including the cases in which the accused are in prison, the cases of Motor Accident Claim Petition, the Matrimonial matters etc. Therefore, merely because the Court can pass an order for expeditious disposal of a suit or other proceedings it is never necessary to file Revision Application before the Court.

79. An argument has also been advanced with respect of the non -appealable order passed under Order 7, Order 36, Order 37 and Order 38 of the Civil Procedure Code. Since, the present Revision Application has been filed against the judgment and order in Misc. Civil Appeal under Order 43 of the Code, it would not be necessary to consider other provisions under which non-appealable orders may have been passed by the Court concerned. Therefore, it would be necessary and proper to confine this judgment only with respect to the judgment and order which come to this Court on account of Misc. Civil Appeal under Order 43 of the Code.

80. It has been again argued that if the revisionist petitioner establishes that impugned order constitutes : (1) a case decided by subordinate Court, (2) in

which no appeal lies to High Court, (3) where the subordinate Court appears to have exercised jurisdiction not vested in it or failed to exercise such jurisdiction so vested or exercised jurisdiction illegally and with that material irregularity a Revision would be maintainable.

81. As said above, these are the tests, which are required to be examined by the Revisional Court acting u/s 115 of the Code. There is no dispute about the same. But further requirement of the examination would be the examination of the proviso to Sub-section (1) of Section 115 of the Code. Therefore, over and above, the other points stated hereinabove, the Court will further be required to consider the provision of 1999 Amending Act. Therefore, there is no dispute that the Court will be required to examine the aforesaid aspects, but at the same time, the Court will not restrict its examination to the aforesaid aspect only, but will further be required to examine the matter further as discussed hereinabove.

82. An attempt was also made to argue that the Parliament never desired to outright demolish the provision contained in Section 115 of the Code. There is no dispute about the same. Had there been an intention of the Parliament to totally demolish the provision contained in Section 115 of the Code, the Parliament would have demonstrated it expressly or by necessary implication. In the present Amendment Act, 1999, we find that the provision of Revision Application has been kept in the text-book with some modification deleting Clause (b), Sub-section (1) of Section 115 of the Code. Therefore, it is accepted that Parliament did not intend to strike down the provision contained in Section 115 of the Code.

83. It has then been argued that the amended provision will not apply to the present Revision Application. For this purpose, we have to consider Section 32 of the Amending Act of 1999 which has been reproduced in Para 17 hereinabove.

84. Sub-clause (i) of Sub-section (2) of Section 32 of the Amending Act of 1999 very clearly says that the provision of Section 115 of the Principal Act as amended by Section 12 of this Act shall not apply to or affect any proceeding for Revision which had been finally disposed of.

85. It has been argued that ordinarily an amendment would not apply to a matter which has already been disposed of and that even if this provision was not enacted and included in Section 32 of the Amending Act, then also the amendment which has come into force from 1-7-2002 would not have applied to the Revision Applications, which have already been disposed of by the Court before 1-7-2002. It is, therefore, submitted that there was absolutely no need to include such a provision in Sub-clause (i) to Sub-section (2) of Section 32 of the Amending Act, 1999.

86. We have to accept that when a provision has been made in an Amending Act, it has its own sense, meaning and wisdom of the Parliament. It has been submitted on behalf of the respondent by Mr. S.B. Vakil, that this clearly indicates that barring the Civil Revision Applications which may have been disposed of before 1-7-2002, all other revision applications would be governed

by the new provision of Section 115 as amended by 1999 Amending Act. With respect to present Revision Application, we find that it has been filed after 1-7-2002. Therefore, it has to be construed that this Revision Application will be governed by the Amending Act, 1999.

87. It has also been contended that right of the party would be crystallised on the date of filing of the suit as per the law as it may stand on the date of the institution of the suit. At the same time, it is also true that if any procedural law is amended, then the amendment can take effect even retrospectively also and an amendment can be made applicable to the pending proceedings by express provision or by necessary implication. There cannot be any dispute about the same. When a law has been enacted, ordinarily, it would apply prospectively but by making appropriate provision the amendment can be made applicable retrospectively to the pending proceeding also by making express provision or by necessary implication.

88. For this purpose, we have to read Sub-section (2) of Section 32 of the Amending Act. It is required to be considered that Clause (f) of Sub-section (2) of Section 32 makes it clear that the provision of Section 96 of the Principal Act, as amended by Section 9 of Amending Act, shall not apply to or affect any appeal from the original decree, which had been admitted before commencement of Section 9 and admitted appeals shall be dealt with as if Section 9 has not come into force. This shows that the appeal which has been admitted before 1-7-2002 has been expressly saved from the operation of the Amending Act, 1999. Similar provision has been made in Clause (h) to Sub-section (2) of Section 32 of the Amending Act, 1999, under which it has been clearly clarified that the provision of Section 102 of the Principal Act, as substituted by Section 11 of the Amending Act, shall not apply to or affect any appeal which had been admitted the commencement of Section 9 and every such appeal shall be disposed of as if Section 11 had not come into force. This would again mean that the appeals which may have been admitted before 1-7-2002 have been saved by the provision made in Clause (h) to Sub-section (2) of the Section 32 of the Amending Act. Similar provisions are found in other Clauses to Sub-section (2) of Section 32 of the Amending Act, 1999. This would show that Parliament has demonstrated that some provisions of the Amending Act, 1999 will not affect certain proceedings which have reached to a particular stage. The intention of the Parliament goes to suggest that the Amending Act, 1999 will apply to the appeals, which may have been filed before 1-7-2002, but which have been pending for admission as on 1-7-2002. This provision clearly negatives the argument that a right of a party to appeal, as it stood on the date of institution of the suit, will continue to be with such a party even after the Amending Act, 1999 has been brought into operation.

89. On the other hand, it has been made clear with respect to Revision Application u/s 115 of the Code, that this Amending Act shall not apply to the proceedings which have already been disposed of finally before 1-7-2002.

Considering the language of Clause (i) to Sub-sec, (2) of Section 32 of the Amending Act, and considering the language of other clauses of Sub-section (2) of Section 32 of the Amending Act, 1999, I am of the opinion that since the present Revision Application has been filed subsequent to the coming into force of the new Amending Act, 1999, the present Revision Application will clearly fall within the purview of the amending provisions. It would, therefore, not governed by the provision of Section 115 of the Code, as it stand prior to its amendment of 1999.

90. Mr. U.D. Shukla, learned Advocate has, in support of Mr. Mihir Joshi, argued that the right of the party stood crystallised on the date when he purchases a property. Therefore, the right of the party concerned, would be required to be decided on the date on which the property is purchased by him. In other words, if a particular law is applicable to a property, and if the law has been amended subsequent to the purchase of the property, then the said amended law would not be applicable to the said person purchasing the said property before the amendment in law. Now, it is very clear that it would depend upon the mode and manner in which the amendment is made applicable. If the amendment does not show anything then it may apply prospectively on and from the date on which it is made applicable. However, either by express provision or by necessary implication, if the law is found to be made applicable even to the purchaser who has purchased the property prior to the amendment, then the said amendment would certainly apply to the person purchasing the said property before the amendment takes place.

91. One more thing is required to be considered. As said above, an application under Order 39 of the Code is a part of a suit and is not an independent proceeding. The reason is that an order under Order 39 of the Code can be passed only in "a suit" as clarified by the opening words of Order 39 of the Code. It is not an independent civil proceeding. There cannot be an order under Order 39 of the Code without there being a Civil Suit. Therefore, even if the said application is disposed of, at the best, it can be said that a part of the suit has been disposed of but it cannot be said that the suit has been disposed of by disposal of an application for interim relief.

92. It is required to be considered that under Sub-rule (2) of Rule 2 of Order 14 of the Code, it has been provided that where issues, both of law and of fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first. This means that whenever the Parliament wanted that even a part of a suit could be disposed of, then the provision is made to that effect. Therefore, if a similar intention was here with respect to the applicability of proviso to Sub-section (1) of Section 115 of the Code, then there also the Parliament could have said that if the order in Revision was in favour of the revisionist, then it would have disposed of the suit or any part thereof or it would have stated that such an order would have disposed of other proceedings or any part thereof. That is not the law

enacted, and therefore, it cannot be said that even when a part of the suit or part of the proceeding has been disposed of it would create a right in the revisionist to file a Revision Application.

93. It is true that Clause (i) to Sub-section (2) of Section 32 of the Amending Act, 1999, provides that the applicability will be subject to Section 6 of the General Clauses Act. Even on careful reading of the said provision, it is not possible to agree with the argument of the learned Advocate for the petitioner that the Amending Act, 1999, will not apply to the Revision Applications which are filed after 1-7-2002. In the present case, it has to be held that since the Revision Application has been filed subsequent to the coming into operation of the Amending Act, 1999, the Amending Act of 1999 will apply to this revision, and therefore, the Revision Application will not be maintainable.

94. Mr. A.K. Mankad, learned Advocate states that looking to the nature of the dispute raised, it would be appropriate to issue notices to the Bar Council Association, High Court Bar Association and the Associations in the State in order that the Advocates may get opportunity to meet with the situation. Looking to the nature of dispute arising in the matter, it is not very much necessary to go by that process. Moreover, the said process is likely to take a very long time for the disposal of the issue in question and in the meantime it would be difficult to entertain other Revision Applications flowing day in and day out. On one hand, it would not be possible to hold over those Revision Applications without any order interim or otherwise, on the other hand, if some interim orders are passed then the such others may also result into some technical difficulty.

95. Mr. A.K. Mankad, learned Advocate, arguing as an intervener has further pointed out that the provision u/s 115 of the Code has been considered to be a window through which the High Court could look at the activity of subordinate Courts. It is not in dispute that the State judiciary is under effective administrative control and Supervisor of the High Court under Article 235 of the Constitution of India. At the same time, when the Parliament has power to provide a window, it has a power to provide a door also. It has also a power to take away doors and windows already provided. On the other hand, the High Court has got many other doors and windows at its disposal for keeping a close supervision over the judiciary in the State. If the eyes and ears of High Court are kept open, the closure of a window or door would not put the High Court to a helpless condition. Only a peeping through a particular window has been done away with. At the same time, there is no change effected in the provision contained under Article 227 of the Constitution of India. Therefore, there is no room for any apprehension of the nature indicated by Mr. Mankad.

96. Mr. V. C. Desai, learned Advocate, has argued that the provision should be construed liberally. It is his argument that, the order in Revision, even if passed in favour of the revisionist may not dispose of the suit or other proceedings directly, the resultant effect of the order may ultimately dispose of the suit or proceedings, and therefore, that aspect is required to be considered. In fact, this

aspect has not arisen in this present Revision Application. Therefore, it is not necessary to deal with the same in this matter.

97. In above view of the matter, I am of the opinion that in the present matter the Revision Application has been filed after 1-7-2002 i.e. after the date on which the Amending Act of 1999 has come into force. I am also of the opinion that in the present matter the Revision Application has been filed against the judgment and order of the District Court and even if the said judgment and order were in favour of the present revisionist, it would not have disposed of the suit or other civil proceedings finally, and therefore, the Revision Application will be hit by the proviso to Sub-section (2) of Section 115 of the Code, and therefore, such a Revision Application is not maintainable and accordingly it is required to be dismissed.

98. For the foregoing reasons, this Revision Application is ordered to be dismissed. No order as to costs. At the same time, I will be failing in my duty if I do not put on records a word of appreciation for the valuable assistance provided voluntarily by the learned Advocates at Bar, who were not directly interested in the result of the matter, but who voluntarily assisted the Court since the issue has come up for the first time as the new law has come in force only from 1-7-2002.