

**(1971) 12 PAT CK 0006**  
**In the Patna High Court**  
**Case No : Civil Revision No. 300 of 1970**

Ramgulam Choudhary and Others

APPELLANT

Vs

Nawin Choudhary and Others

RESPONDENT

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**Date of Decision :** 13-12-1971

**Acts Referred:**

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11A  
Civil Procedure Code, 1908 (CPC) — Order 26 Rule 6, Order 39 Rule 1, Order 41 Rule 5, Order 6 Rule 17, 115

**Citation :** AIR 1972 Patna 499

**Hon'ble Judges :** N.L. Untwalia, J

**Bench :** Single Bench

**Advocate :** Balbhandra Prasad Singh, Nagendra Prasad Singh and Umesh Prasad Singh, for the Appellant; Kailash Rai, Binod Kumar Rai and Naresh Kumar Sinha, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.L. Untwalia, J.—In Title Suit No. 3 of 1964, pending in the Court below the plaintiffs-opposite party in this Civil Revision application closed their evidence before the 4th March, 1970. By that time, the defendants-petitioners had also examined, as it appears, all their witnesses, but certain documents were filed on the 4th March as also on the 5th March, 1970. On the 4th March, 1970, the plaintiffs filed a petition for examination of a handwriting expert in support of their case that a disputed document which had already been tendered in evidence did bear the signature of one of the defendants. In that regard, the defendants had already examined an Expert while they were examining their witnesses.

The learned Munsif disposed of that petition by his order dated the 5th March, 1970. This order was passed after recording that the defendants had closed their case when they had produced and got exhibited all their documents on the 5th March, 1970. He allowed the prayer made by the plaintiffs stating in his order

that the plaintiffs ought to have taken this step earlier and the grounds given by them in their petition dated the 4th March, 1970, were not correct. Yet taking the view that it was in the interest of justice to do so, he acceded to their prayer on payment of Rs. 100 as costs to the defendants. The defendants have come up in revision to this Court.

2. Learned counsel for the petitioners submitted that the Court below has committed an error of jurisdiction in allowing the prayer of the plaintiffs. Reference was made to the procedural law contained in Rule 2 of Order XVIII of the Code of Civil Procedure, hereinafter referred to as the "Code". In reply learned counsel for the opposite party submitted that the Court had powers under Order XVIII, Rule 2 of the Code to allow the plaintiffs to adduce further evidence or, in any event, the Court had inherent power to do so. Reliance was placed upon an unreported decision of mine in *Bihar State Board of Religious Trust v. Manmohan Das*, (Civil Revn. No. 1192 of 1966, decided on 13-12-1966 (Pat,)). It was further strenuously submitted on behalf of the opposite party that in any view of the matter, the order in question is not a case decided within the meaning of Section 115 of the Code to give jurisdiction to this Court to interfere with the order.

3. In the case of *Bihar State Board of Religious Trust v. Manmohan Das*, Civil Revn. No. 1192 of 1966, D/- 13-12-1966 (Pat.) aforesaid, I had said:

"Keeping the principle of law thus crystallised by the Supreme Court on reference to its earlier decision in view, I am of the opinion that in certain circumstances, although, I must reiterate, these circumstances will be few and far between the trial Court can allow a party to a suit to adduce further evidence at any stage of the suit before the judgment is pronounced, and even after the close of the evidence by that party. I must hasten to add that such power is not to be lightly exercised it has got to be sparingly exercised under very special circumstances. And, one of them surely would be if the court were satisfied that the party, in spite of due diligence, had no knowledge of that evidence when he was closing his evidence."

I should have thought that the order of the Court below perhaps could not be supported on the basis of the principles enunciated by me in Civil Revn. No. 1192 of 1966, D/- 13-12-1966 (Pat). But that would have only meant that the order was erroneous and a further question would have arisen as to whether the error committed by the Court below was an error in relation to the exercise of its jurisdiction. I do not propose to detain myself on this question any longer as I am satisfied that the impugned order is not a "case decided", and to confer jurisdiction upon this Court u/s 115 of the Code, not only there should be an error of jurisdiction in the impugned or but the order must be a "case decided" within the meaning of Section 115.

4. Numerous cases" of the various High Courts have taken different views in regard to the interpretation of the expression "case decided". The decisions of

the Allahabad and Lahore High Courts had taken a narrower view. So did the Rajas-than High Court. The other High Courts have taken a liberal view. The narrower view was canvassed for acceptance of the Supreme Court in Major S.S. Khanna Vs. Brig. F.J. Dillon, , but it was not accepted. Repelling the narrower view, Shah, J. (as he then was) said at page 501:--

"The expression "case" is a word of comprehensive import: it includes civil proceedings other than suits, and is not restricted by anything contained in the section to the entirety of the proceeding in a civil court. To interpret the expression "case", as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence which the jurisdiction to issue writs, and the supervisory jurisdiction are not subject and, may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice."

5. A few years later, a question arose before the Supreme Court in Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, that if the expression "case" did not mean only the entire proceeding but also meant a part of the proceeding as held by that Court in the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, , then could it lead to the conclusion that every interlocutory order of the Court, if it suffers from an infirmity of error of jurisdiction, should be taken to be a case decided so as to clothe the High Court with the power of interference. The question was answered in the negative and Shah, J. (as he then Was) said at page 410:

"A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of Section 115 of the Code of Civil Procedure."

6. In the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, , while keeping the suit pending, the trial Court had decided that it was not maintainable. The High Court interfered with that order and held that the suit was maintainable. The argument before the Supreme Court for acceptance of the narrower view was that when the suit was still pending, from the decision of the trial Court deciding only one issue Civil Revision was not competent as the entirety of the matter was not decided and hence the order holding that the suit was not maintainable was not a case decided. As I have already stated, the Supreme Court refected this argument. A converse case came before the Supreme Court in Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, . The objection of the plaintiffs to certain questions being put to their witness by the defendants had been disallowed by the trial Court. The High Court interfered in revision. The Supreme Court set aside the order of the High Court and laid down a guide line as to what should be deemed to be a case decided within the meaning of Section 115 of the Code. Of course, their Lordships advisedly neither attempted a definition in a strait-jacket nor laid down an elaborate test, but yet indicated a guide line to be applied on the facts of a particular case. In that light it has to be

determined whether the order complained against can be said to be a case decided. What the learned Munsif did in this case was that he permitted the plaintiffs to adduce more evidence after the close of their case, and even after the close of the defendants' case. For the purpose of the suit he did not decide any right or obligation of the parties, which right or obligation was in controversy therein. Even assuming that he committed error of jurisdiction in allowing the plaintiffs to adduce further evidence at that stage of the suit, surely he was not adjudicating upon any right or obligation of the parties in controversy. It is well known that from the date of institution of a suit or a proceeding and until its conclusion by the trial Court, several orders are made from time to time. Some of them may be erroneous orders and even, may smack of errors of jurisdiction. But all interlocutory orders, as the Supreme Court has pointed out, cannot be taken to be a case decided within the meaning of Section 115 of the Code. A line has to be drawn between two types of orders, although both of them are made during the pendency of the suit or proceeding. It has to be noticed whether a particular order is an adjudication by the trial Court deciding for the purpose of a suit or proceeding some right or obligation of the parties in controversy, or whether it is an order which is not of that kind. In the light of the guiding principle laid down by the Supreme Court in the case of Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, , I may endeavour to give a few examples, to make myself clear, as to on which side of the line a particular order would lie. I would like to point out that an order in relation to interim injunction or appointing a receiver, when the case comes to this Court after the matter has been decided by the lower appellate Court, or an order of stay staying the hearing of a suit or proceeding, or an order made u/s 11-A of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, and possibly an order in relation to amendment of pleadings could be the types of order in which it can be said that the order decides the case as it determines some right or obligation of the parties in controversy, and if there is any error of jurisdiction in that order, the High Court may interfere with it. It is a different matter that in many such orders there may not be any error of jurisdiction, vide for example D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, and an unreported decision of the Supreme Court in Civil Appeals Nos. 840 and 841 of 1971 [The Managing Director (MIG) Hindustan Aeronautics Ltd., Balanagar v. Ajit Prasad Tarwny], decided on 5-11-1971, Supposing the lower appellate Court while vacating an order of injunction made by the trial Court, and says so wrongly in the opinion of the High Court that since the suit was not a suit under Order 39, Rule 2 of the Code, no order of injunction could be made, such an order undoubtedly, in my opinion, would be a case decided, and the order would be tantamount to a failure to exercise jurisdiction also. There are many kinds of interlocutory orders, where loosely speaking one may argue that some right or obligation of the parties in controversy is decided therein, but applying the true meaning of the principle laid down by the Supreme Court in Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, , one has to notice that there is no such right or obligation of the

parties decided which can make it a case decided to attract the provision of Section 115 of the Code. As for example, some question in examination or cross-examination is disallowed, while it ought to have been allowed; some document is wrongly admitted in evidence, while it ought not to have been admitted, a pleader commissioner's report is confirmed or set aside and further investigation ordered; these will be the types of interlocutory orders which to my mind cannot be interfered with by the High Court within the meaning of Section 115 of the Code.

7. In the instant case, learned counsel - for the petitioners had to concede that if some illegality or irregularity would have been committed by the trial Court in the matter of taking evidence before the plaintiffs had closed their case, in view of the Supreme Court decision, this could not be a case decided within the meaning of Section 115 of the Code. I could not persuade myself to draw a line of distinction between wrongly taking of evidence before the close of the plaintiffs' case and allowing them to adduce further evidence after the close of the defendants' case. The difference may be in the intensity of the error. -The latter error may even go to the extent of being an error of jurisdiction, if not under Clause (a) or (b), but under Clause (c) of Section 115 of the Code. But I am definitely of the view that merely because there is an error of jurisdiction in a particular order, the order cannot come within the meaning of the expression "case decided" so as to allow the High Court to interfere with it. That being so, in my considered judgment, the order of the learned Munsif cannot be interfered with by me in exercise of my revisional powers.

8. The application in revision, therefore, fails and is dismissed; but in the circumstances of the case there will be no order as to costs.