

**(1995) 02 OHC CK 0013**  
**In the Orissa High Court**  
**Case No : Civil Revision No. 244 of 1994**

Samir Kumar Dey

APPELLANT

Vs

Smt. Sova Ray and Others

RESPONDENT

**Date of Decision :** 20-02-1995

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115

**Citation :** (1995) 02 OHC CK 0013

**Hon'ble Judges :** A. Pasayat, J

**Bench :** Single Bench

**Advocate :** S.P. Mishra, for the Appellant; K.N. Jena, D.K. Mohapatra and D. Das, for the Respondent

**Final Decision :** Dismissed

## Judgement

A. Pasayat, J.—In this application u/s 115 of the Code of Civil Procedure, 1908 (in short, the "Code") the order passed by the learned District Judge, Mayurbhanj, Baripada refusing to condone the delay in presentation of the appeal (Title Appeal No. 31 of 1993) is the subject-matter of challenge.

2. Undisputedly there was delay in presentation of the appeal. The petitioner filed the Title Appeal against the final decree dated 15-5-1992 passed by the learned Subordinate Judge, Baripada in Title Suit No. 32 of 1968. The appeal was presented on 26-5-1993. A petition u/s 5 of the Indian Limitation Act, 1968 (in short, the "Act") was filed stating that there was delayed presentation of the appeal, as the appellant was ill and bedridden from 10-5-1992 to 25-5-1993. The prayer was to condone the delay. The respondents (opposite parties herein) filed their objection to the said prayer, inter alia on the ground that the appellant was never ill and was regularly participating in his business activities, and having lost at different stages by way of journey to various Courts including this Court and the apex Court, the appeal had been filed to prolong the proceedings and to frustrate the result of the decree. The petitioner filed certificate issued by Dr. Partha Sarathi Jena, who was also examined as witness No. 1 for the appellant,

while the appellant examined himself as witness No. 2 for the appellant. The respondents also examined witnesses and brought on record certain documents to support their claim that the appellant was never ill during the period as claimed. One of the grounds taken by the respondents was that the appellant was all along coming to Court and also filed petitions, and 12 to 13 adjournment petitions were filed in the Court of Subordinate Judge, Baripada, but nowhere it had been indicated that he was ill or was suffering from rheumatoid arthritis. Two petitions filed by the appellant-petitioner in person were indicated. These two documents were marked as Exts. A and D. One storage agent of the controlled commodities was examined as witness No. 1 for the respondents. He stated with reference to the issue register that the petitioner, who is a retail control dealer was personally known to me, and came to his godown with the issue orders from the supply Department and took sugar, wheat and rice on many occasions between April, 1992 and June, 1993. The signatures given by the petitioner on the issue registers on several occasions were marked Exts. B and C. The stand of the petitioner was that though he is a retail control dealer, the business was being carried on by some other person on his behalf.

3. The learned District Judge found that there was no challenge by the petitioner to his signatures on the issue registers vide Exts. B and C. The doctor also admitted that he had no personal knowledge whether the petitioner was in normal conditions, was able to move freely outside, was lifting controlled commodities from the godown, and was carrying on business and coming to Court to attend other cases. In the aforesaid background, it was held that there was no acceptance reason for presentation of the appeal after the due date.

4. Mr. S.P. Misra, learned counsel for the petitioner submitted that the haziras filed on 11-8-1992 and 19-3-1993 did not reflect that the petitioner had come to Court, though they contained the signatures of the petitioner. Additionally, it is submitted that the signatures in the issue registers were not brought to the notice of the petitioner when he was examined in Court. Mr. K.N. Jena, learned counsel for the opposite parties, however, submitted that the suit was instituted in the year 1968 and after the matter was taken to the District Court, this Court and the apex Court, ultimately final decree could be passed in the year 1992 after specific direction from this Court that the matter should be disposed of within three months by day to day progress in the matter. Delivery of possession was given by the Court Process Server, and signature of the petitioner is available on that writ. Findings by the learned District Judge are based on evidence brought on record, and this Court should not interfere while exercising revisional jurisdiction u/s 115 of the Code.

5. The jurisdiction to be exercised u/s 115 of the Code is called the revisional jurisdiction, and is available to be exercised in matters in which no appeal lay to the High Court, and the case has been decided by any Court subordinate to the High Court. For exercise of that power either of the three conditions indicated in the provision itself has to exist. They are where the subordinate Court appears

(i) to have exercised jurisdiction not vested in it by law, or (ii) to have failed to exercise jurisdiction vested in it by law; or (iii) to have acted in the exercise of its jurisdiction illegally or with material irregularity. The proviso provides 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, 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.

According to Mr. Misra, learned counsel for petitioner, the order, if allowed to stand, would occasion a failure of justice, and would cause irreparable injury to the party against whom it is made.

6. The learned District Judge has elaborately dealt with the fact situation. He has found that two petitions dated 11-8-1992 and 19-3-1993 contained signatures of the petitioner. That position is not disputed. It is, however, stated that the Advocate's Clerk might have got the signature. Such an explanation was never offered before the learned District Judge. The plea is very far fetched. Additionally witness No. 1 examined for the respondent-opposite parties has clearly stated about his business activities with the petitioner, who is known to him since long. He has brought on record materials to show that the petitioner was transacting business by personally signing the issue registers. It is stated by Mr. Misra that these materials were not brought to the notice of the petitioner when he was examined. It is to be noticed that in Civil Revision No. 76 of 1994 this Court by order dated 15-4-1994 directed the petitioner to examine the doctor who had examined him. The lower appellate Court was directed to make enquiry on the report of illness of the petitioner. This is how the necessity for bringing material on record to show how far the plea of illness was established. The petitioner had the opportunity of cross-examining the witness, who had categorically denied the suggestion that the signatures are not of the petitioner. No effect was made to prove that the signatures were not that of the petitioner.

7. This Court has the power to exercise revisional jurisdiction only if the 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. As observed by the apex Court in *D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others*, the position is firmly established that while exercising the jurisdiction u/s 115 of the Code, it is not competent to the High Court to correct errors of fact, however, gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. The words "illegally and with material irregularity," as used in Clause (c) also do not cover either errors of fact or of law, they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may relate either to breach of some provision of law or to material

defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. While in a first appeal the Court is free to decide all questions of law and fact which arise in the case, in the exercise of revisional jurisdiction, the High Court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts for those of the subordinate Court. The jurisdiction of the Court u/s 115 of the Code is a limited one. It does not encompass conclusions of law or fact in which the question of jurisdiction is not involved. In non-condonation of delay, there was no jurisdictional defect or error in the findings of the lower appellate Court so as to entitle this Court to interfere u/s 115 of the Code.

8. Considering all these aspects, I do not find it to be a fit case for exercise of revisional power. The revision application is dismissed. Send back the records immediately.