

**(1998) 07 CAL CK 0025**

**In the Calcutta High Court**

**Case No :** Civil Revisional Jurisdiction C.O. No. 1330 of 1998

Smt. Bani Pal

APPELLANT

Vs

Arun Kumar Paul

RESPONDENT

**Date of Decision :** 28-07-1998

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37, 115  
Constitution of India, 1950 — Article 227  
Family Courts Act, 1984 — Section 19, 19(1)  
Hindu Marriage Act, 1955 — Section 24  
Limitation Act, 1963 — Section 14  
Motor Vehicles Act, 1988 — Section 173

**Citation :** (1999) 1 CALLT 421 : (1999) 2 DMC 624 : (1999) 3 RCR(Civil) 312 :  
(1999) 3 RCR(Criminal) 40

**Hon'ble Judges :** Dibyendu Bhusan Dutta, J

**Bench :** Single Bench

**Advocate :** Mr. Jiban Ratan Chatterjee and Mr. Sandip Kumar, for the Appellant;  
Mr. P.K. Dutta, Mr. Subrata Dutt and Mr. D. Pattanayek, for the Respondent

## **Judgement**

D. B. Dutta, J.—The City Civil Court, Calcutta by its order No. 34 dated 14.3.1989 allowed the application of the petitioner wife u/s 24 of the Hindu Marriage Act and directed the husband opposite party to pay alimony pendente lite to the petitioner wife at the rate of Rs. 1500/- per month with effect from 19.9.1987 and litigation cost of Rs. 3000/- In Matrimonial Suit No. 150 of 1987. Being aggrieved by the said order, the opposite party husband preferred revision before this court whereupon In Civil Order No. 1068 of 1989 by order dated 15th May 1998 this court dismissed the said revision petition.

2. With effect from 1.8.1991 Family Courts Act, 1984 came into force in West Bengal and the petitioner wife put the said award of the City Civil Court granting alimony and litigation costs into execution in Mat. Execution Case No.1 of 1995 in Family Court, Calcutta under Order 21 Rule 37 of the Code of Civil Procedure. The said court refused to grant any relief in favour of the petitioner wife on a

finding that the opposite party husband has no means to pay, by order dated 69 dated 30.4.1998. It is this order of refusal to execute the award that forms the subject matter of the instant revision petition.

3. u/s 19 of the Family Courts Act, appeal lies from every judgment or order of Family Court, not being an interlocutory order, both on facts and on law and since an appeal lies against the Impugned order, Mr. Chatterjee, learned Advocate appearing for the petitioner wife frankly conceded that no revision u/s 115 of the CPC lies in the instant case. He, however, prayed for conversion of the revision petition into appeal. It is submitted by Mr. Chatterjee that the time limit prescribed for filing appeal u/s 19(1) of the Family Court Act is one month and the present revision petition was in fact, filed before the expiry of the said time limit. It is submitted by Mr. Chatterjee, that this court has every jurisdiction to allow a revisional application to be converted into an appeal. Mr. Chatterjee refers to a decision of the apex court reported in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, wherein it was observed :

The right of appeal is one of entering a superior court and invoking its aid and interposition to redress the error of the court below. Two things which are required to constitute appellate Jurisdiction are the existence of the relation of superior and inferior court and the power on the part of the former to review decisions of the latter. When the aid of the High Court is invoked on the revisional side it is done because it is a Superior Court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the CPC circumscribes the limits of that Jurisdiction but the jurisdiction which is being exercised is a part of the general appellate Jurisdiction of the High Court as a Superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider, and larger sense.

4. Mr. Chatterjee, refers to another decision of the apex court in *The Reliable Water Supply Service of India Vs. Union of India (UOI) and Others*, and submitted that the High Court can convert an appeal into a revision. Mr. Chatterjee, learned advocate has also referred to a Full Bench decision of Madhya Pradesh High Court reported in *Oriental Insurance Company Limited, New Delhi Vs. Chitaman and Others*, wherein the said High Court allowed the revisional application under Article 227 of the Constitution to be converted as an appeal u/s 173 of the Act concerned, i.e., Motor Vehicles Act, with liberty to the petitioner to amend the petition in an appropriate manner so that it could be registered and then dealt with as an appeal.

5. Mr. Dutt, learned senior advocate appearing on behalf of the opposite party husband, however, opposes the prayer of the petitioner wife for allowing the present application to be converted into an appeal. It was submitted by Mr. Dutta, learned advocate that this court lacks inherent Jurisdiction to entertain the instant application as a revision petition u/s 115 of the CPC and where the court inherently lacks the jurisdiction to entertain the petition, it cannot make

any order for amendment to bring the petition within its jurisdiction. in support of this contention, Mr. Dutta has placed reliance upon the Division Bench decision of this court in Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others, Mr. Dutta, learned advocate further submitted that the proper course would be for the petitioner to file an appeal along with an application u/s 14 of the Limitation Act praying for condonation of delay in view of the fact that she was prosecuting the Us in a wrong forum.

6. We have noticed that the apex court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, categorically observed that "it Is only one of the modes of exercising power conferred by the Statute: basically and fundamentally it Is the appellante Jurisdiction of the court which Is being invoked and exercised in a wider, and larger sense. Had the instant application been initially moved/as an appeal and not a revision application u/s 115 of the Civil Procedure Code, no objection could have been raised against its maintainability and it could be entertained by the court as an appeal. It would indeed be too much to hold that simply because the application was filed as a revisional application, it would be incompetent for this court to allow the petitioner to amend it so as to convert the same into an appeal. The Division Bench decision of this court cited by Mr. Dutta, learned advocate for the opposite party husband does not, however, apply to the facts and circumstances of the present case because in that case the High Court lacked the territorial Jurisdiction by reason of the fact that the cause of action arose beyond the local limits of its territorial jurisdiction.

7. Giving the matter my anxious consideration, I am of the view that if an appeal can be allowed to be converted to a revision, there is no point in refusing to allow a revision petition to be converted into an appeal, particularly when the same is not barred by any limits of time. In the facts and circumstances of this case, Justice demands that the conversion sought for should be allowed and the same is hereby accordingly allowed.

8. The petitioner is permitted to have the instant revision petition to be converted as an appeal u/s 19(1) of the Family Court Act, 1984. The petitioner will be at liberty to amend the petition in an appropriate manner after which it will be registered and dealt with as an appeal.

Let certified xerox copy be supplied, on proper application, within three days from the receipt of the file by the Department.

9. Petition allowed