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A Critical Analysis Into The Revisionary Powers Of The High Court Under Section 115 Of The Code Of Civil Procedure, 1908 - Is Justice At The Mercy Of Trial Courts' Whims And Fancies?

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Introduction:

The Code of Civil Procedure[1] was first enacted in the year 1859 and at the time it did not contain any provision vesting High Courts with the power of superintendence. It was only in the year 1877 that the revisional jurisdiction of High Courts was finally articulated[2] within the Code[3]. This provision was further amended in the year 1879 and finally[4] in the year 1908 to become what is now known as Section 115 of the Code of Civil Procedure,1908[5]. This paper seeks to analyze the effect of such amendments and the remedies available to a litigant in light of the revisionary powers vested in the High Courts under Section 115 of the Code with an emphasis on subsection (c) of the provision and Article 227 of the Indian Constitution.

Section 115 of the CPC lays forth three instances in which High Courts may intervene in an order passed by a subordinate court, viz: "Where the lower court has: (*a*) exercised a jurisdiction not vested in it by law, or (*b*) has failed to exercise a jurisdiction so vested, or (*c*) has acted in the exercise of its jurisdiction illegally or with material irregularity".

Under the Code, the term "jurisdiction" denotes pecuniary, territorial, and subject-matter jurisdiction. The High Court is not empowered to exercise its revisional jurisdiction except in the instances mentioned above. Additionally, the Court also cannot delve into the merits of the case and evidences presented thereof. It can only monitor whether the court whose orders are being reviewed acted within its legal authority and whether the irregularity in exercising jurisdiction warrants intervention by the Court. Unless there is an error committed by the trial court in exercising its jurisdiction, the High Court cannot interfere with the trial court's order[6].

[1] Hereinafter CPC
[2] "622. *The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, and may pass such order in the case as the High Court thinks fit*."
[3] Section 622 of the Code of Civil Procedure, 1877
[4] It is to be noted that though the Code has been amended multiple times since, it has withstood the test of time and is known as Code of Civil Procedure 1908
[5] Hereinafter 'the Code'
[6] *P. Udayani Devi v. V.V. Rajeshwara Prasad Rao*, (1995) 3 SCC 252

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The jurisprudence underlying such supervisory powers is to ensure that the powers vested in a subordinate court is subject to 'checks and balances' and that the court does not exercise its jurisdiction capriciously, arbitrarily, illegally or in any manner not provided within the law. This power, however, is to be differentiated from the High Courts' power of appeal which is to correct errors of facts and law[7]. The revisionary powers of the High Court are not intended to correct factual and legal errors, no matter how egregious they may be. Needless to say, an aggrieved party will, in most cases, have an alternative remedy in the form of an appeal through which they can seek relief from a higher court.

Right To Appeal Under the Code:

Right to Appeal to a superior Court against a judgement or a decree passed by a civil court is a substantive right provided to litigants. The original court and the first appellate court are the courts that have the requisite authority to evaluate facts and law. A second appeal is only when there is a substantial question of law involved. If a subordinate court has committed gross and palpable errors while reaching a conclusion, the aggrieved person can appeal to the High Court, but only in instances where appeal lies, as provided by law under Order 43[8] and Section 104[9] of the CPC.

Understanding The Essentials And Language Of Section 115 Of The Code:

Therefore, in situations where the order is non-appealable, the only remedy available to an aggrieved person is to file a revision petition under Section 115 of the Code. This remedy, however, is not a substantive right of the litigant as he/she has to satisfy certain conditions in order to invoke the revisional jurisdiction of the High Court. The aggrieved party must:

First, demonstrate that the case for which revision is being sought has been decided and should not be pending in Court.
This was elaborated by the Supreme Court in the case of *Major S.S. Khanna v. Brig, F J. Dillon*[10] where the court noted that 'case decided' does not necessarily imply that the proceedings should be completed, and that the entire case must be disposed of. The Court ruled that when an order is made, that also amounts to a decision with respect to a specific issue of a case and that revision can be sought against such orders as well. Here, it is is pertinent to note that prior to the 1999 amendment of the Code, interlocutory orders which are interim in nature were within the ambit of 'case decided', i.e., they were revisable under certain situations[11]. Following the recommendations made by the Malimath Committee[12], the legislature enacted the Code of Civil Procedure (Amendment Act) of 1999 which curtailed the revisional jurisdiction of the High Court with regards to interlocutory orders. As a result, the Court in *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers*[13] held that those orders which are interim in nature and do not decide the suit finally, cannot be subject matter of revision under Section 115 of the Code.

[7] Mulla's Code of Civil Procedure (18th ed., 2013)
[8] Appeals from Order
[9] Orders from which Appeal Lies.
[10] AIR 1964 SC 497
[11] Id.
[12] Ranjan, Brajesh, Curtailment of Revisional Jurisdiction of High Courts in India: A Critique (October 5, 2009). Available at SSRN: https://ssrn.com/abstract=1482946 or http://dx.doi.org/10.2139/ssrn.1482946

[13] *Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers* AIR 2003 SC 2434

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Second, demonstrate that the order for which revision is being sought is non-appealable.
All orders except the ones mentioned under S.104 and Order 43 of the Code are non-appealable. Moreover, a decree passed by a court that is based on the consent of both parties is also non-appealable[14].Thus, the aforesaid orders and decrees can be revised upon filing a revision petition before the High Court under S.115.

Third, demonstrate that there was a jurisdictional error, instances of which are provided under the section, that has been committed by the subordinate court while arriving at its decision.

Fourth, for the petition to be maintainable, the party seeking such revision needs to satisfy the court that if the order had been made in its favour, it would have finally led to the dismissal of the suit/proceeding[15].
Thus, a revision petition would be maintainable only when the aforementioned conditions are met.

When it comes to the language used by the lawmakers while drafting Section 115 of the Code, a cursory reading of sub-section (c) may lead one to believe that the High Court can intervene with its supervisory powers whenever the subordinate court has acted in a manner which is 'materially irregular' or 'illegal' while exercising its jurisdiction. However, it is worth noting that the foregoing words are preceded by the word 'acted', implying that the illegality or irregularity should be with how the court exercises its jurisdiction rather than how it conducts its proceedings. If the subordinate court was not within its pecuniary, territorial, or subject-matter jurisdiction, only in such instances can the High Court intervene. Therefore, under its revisional jurisdiction, it is immaterial whether the findings of the lower court were right or wrong. If the lower court had perfect jurisdiction to decide a case, and even if it decided it wrongly, it did not exercise its jurisdiction illegally or with material irregularity and hence the revision petition would not be maintainable.
The said principle has been reiterated in the case of *Keshardeo Chamria Vs Radha Kissen Chamria and Ors*[16] where the Privy Council, while referring to a number of cases on the said section, laid down what is meant by the terms 'material irregularity' and 'illegality'. The Court noted that "Section 115 applies only to cases in which no appeal lies, and, where the legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final."

The Underlying Issue- Is Article 227 Of the Constitution sufficient to bridge the gap?:

The issue that now follows is that if, after the amendment, no revision petition is maintainable until and unless all the criteria mentioned above is satisfied, then what recourse is available against an order passed by the subordinate court which might be egregiously unjust and irregular?

This is where Article 227 of the Constitution comes into picture. Article 227 of the Indian Constitution grants all High Courts supervisory jurisdiction over all the subordinate courts within their jurisdiction. This power is often misunderstood with the revisionary powers of the High Court.

[14] Section 96 of the Code.
[15] Supra note 13
[16] AIR 1953 SC 23

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However, in *Shiv Shakti Coop. Housing Society*[17] judgement the Court ruled that the curtailment of the High Court's revisional jurisdiction does not and cannot take away the constitutional jurisdiction of the High Courts to issue a writ of certiorari to a civil court, nor does it take away or whittle down the power of superintendence conferred on the High Court under Article 227 of the Constitution. The Supreme Court ruled that such power exists, unaffected by the amendment to Section 115 of the Code, and can be exercised subject to well-established rules of practise and self-discipline.

Nonetheless, the aggrieved person can invoke the supervisory jurisdiction of the High Court under Article 227 only under extraordinary circumstances. The Supreme Court established the principles under this jurisdiction in the case of *State v. Navjot Sandhu*[18] where the court noted:

> *"(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;*
> *(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order;*
> *(iii) the power must be exercised sparingly, only to move the subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised 'as the cloak of an appeal in disguise'."*

Moreover, it is essential to note that in the same year when the court decided the *Shiv Shakti Coop. Housing Society*[19] judgement, another 3-judge bench of the Supreme Court in the case of *Sadhana Lodh v. National Insurance Co. Ltd*[20] stated that :

> *"Where a statutory right of appeal has been provided, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court has been expressly barred by a State enactment, only in such cases a petition under Article 227 of the Constitution would lie and not under Article 226".*

This view has also been reiterated by the court in the case of *Radhe Shayam v. Chabbi Nath*[21].

In light of the preceding decisions, it can be concluded that the remedy provided by Article 227 of the Constitution cannot be invoked for correcting mere errors of law and cannot be used as an alternative form to an appeal. It would only be available where filing of revision petition is expressly prohibited by the State legislature But what happens when there is no express prohibition imposed by the legislature? By the above analogy, if a person has an alternative recourse available, a petition under Article 227 of the constitution would not lie and the only option left with the litigant is to either appeal or file for a revision petition.

It should be noted, however, that there are plethora of orders passed by the Trial Court against which no appeal lies[22]. The only remedy available to the litigant then is in the form of revision petition under S.115 of the Code. But what happens when the High Court finds that the subordinate court has acted within its jurisdiction and as a result dismisses the petition on the ground that the matter is not

[17] Supra note 13.
[18] (2003) 6 SCC 641.
[19] Supra note 13.
[20] (2003) 3 SCC 524.
[21] AIR 2015 SC 3269.
[22] As previously explained under the section of 'Understanding the essentials and language of S.115'.

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revisable. Since it is not up to the High Court to re-appreciate the evidence or interfere with the conclusions and findings of the subordinate court, what recourse is then available to the litigant when the lower court makes grievous and palpable errors in reaching a decision? They cannot conceivably invoke Article 227, since the Court can reject such applications on the basis that an alternate remedy is available, and even if that is exhausted, the underlying purpose of this article is not to correct factual or legal errors. Then what does one do in cases when such unjust errors are committed by Trial Courts while passing orders that are non-appealable? Perhaps the only viable solution is to devise a mechanism that can increase the accountability of the Trial Court's actions. Even if constitutional rights provide a forum for alternative remedies, it should not be used to excuse legislators from addressing the gaps in our procedural laws.

Conclusion:

Given the preceding arguments, it may now be the appropriate time for legislators to consider the above-mentioned questions. If High Courts do not intervene when Trial Courts commit appalling and inequitable errors, justice will undoubtedly suffer. Rights available to the litigants, under procedural laws, cannot be left solely to the whims and caprices of Trial Courts. Such justice will be based on a few disparate pieces of evidence and will neither be done in accordance with law nor equity.The aggrieved parties may soon refrain from approaching the courts because they may not see the point in wasting a considerable amount of time and money when the matter can be settled between the parties outside the court, which may, at times, result in important questions of law remaining unquestioned and hence unanswered.

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