



ORIGINAL RESEARCH PAPER

Law

NATURE AND SCOPE OF REFERENCE REVIEW AND REVISION UNDER CIVIL PROCEDURE CODE 1908

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ABSTRACT

According to civil procedure Code 1908 when a party is aggrieved by the decree passed by the court, then the party can approach the superior court by way of appeal against the decree passed by a trial court. In appeal the whole dispute is reheard by the Appellate court. But when there are technical errors the aggrieved party need not go to the higher court in the form of an appeal. For this purpose CPC has introduced the concept called Reference Review and Revision by an application to remove the technical errors. This Article deals with the nature and scope of reference review and revision and when it can be applied under what circumstance.

INTRODUCTION

Civil procedure code neither creates nor take away any right. It is intended to regulate the procedure followed by the civil court. The procedure must not be complex and the litigant must get a fair trial in accordance with the accepted principles of natural justice. Preamble of the code says that it was enacted to consolidate and amend the laws relating to the procedure to be followed in the civil court having civil jurisdiction in India. The main aim of CPC is to facilitate justice and seek an end to the litigation rather than provide any form of punishment and penalties. So some inherent powers are also given to the court to meet such circumstances according to the principles of natural justice, equity and good conscience.

In India we have three tier of judiciary. The district, High court and the Hon'ble supreme court of India. Every day so many cases are filed and each case having different circumstances. When hearing is going on different questions rises before the court and the court has to decide all the questions according to law. Some times such questions requires the opinion of Highcourt, such doubtful question can be cleared from the superior courts.

Meaning of reference

Reference is mentioned under sec113 of CPC. Where the subordinate court refers the case involving the question of law to the Highcourt for the opinion on that matter, reference is made to the Highcourt when it has reasonable doubt during any suit, appeal, execution proceeding etc. Reference means referring a case to Highcourt on a question of law.¹

Sec113 of civil procedure code

Sec113 empowers a subordinate court to state a case and refer the same to the Highcourt for its opinion. Such opinion can be sought when the subordinate court has a doubt on a question of law.² so a reference can be made on a question of law only when the judge trying the case has a reasonable doubt about it.³

No party to the suit has the right to apply for reference. It is only the subordinate court as the power of reference suomoto. Where there is doubt regarding the validity of any legal provision, for matters other than the validity of legal provision, the court is not found to refer to the Highcourt.⁴ A Tribunal or persona designate cannot be said to be a court and no reference can be made by them.⁵

Object of reference

The underlying object for this provision is to enable subordinate court to obtain in non appealable cases the opinion of High court in the absence of a question of law and there by avoid the commission of an error which could not be remedied later on.⁶ Such provision also ensures that the validity of a legislative provision (Act, Ordinance or

regulation) should be interpreted and decided by the highest court in the state⁷ and there wouldn't remain any chance of misrepresentation. Reference should be made before passing of the judgment in the court.⁸

Condition for reference

Order 46 Rule 1 requires the following condition for a subordinate court to make a reference:-

1. Suit or appeal must be pending in which the decree is not subject to appeal or a pending proceeding in execution of such decree.
2. There must arise a question of law in such suit, appeal or proceeding.
3. The court trying the suit or appeal or executing the decree must have a reasonable doubt on such question.

The subordinate court having a doubt on question of law may be divided into two classes.

1. The question related to the validity of any Act, Ordinance or regulation and.
2. Any other questions.

Under the second condition reference is optional, but in the first condition it is obligatory, if the following conditions are fulfilled

1. It is necessary to decide such question in order to dispose of the case.
2. The subordinate court is of the view that impugned Act, ordinance or regulation is ultra- virus and.
3. There is no determination either by the supreme court or by the Highcourt to which such court is subordinate that such Act, Ordinance or Regulation is ultra virus. It is also essential that only a court can make a reference on application of parties⁹ or suomoto, on its own discretion having fulfilled the above conditions. The apparent requirement of court to make sure such question must have been arisen between parties to the suit and hence port leaves no scope for reference on a hypothetical question which is based on pillars of may or might on a point likely to arise to in future.¹⁰ So it is clear that a reference can be made in a suit, appeal or execution proceeding pending before the court only when there is a doubt of law.¹¹

Power and duty of the Highcourt

The Highcourt has consultative jurisdiction in this regard. In deciding and dealing with it High court is not found to decide only the question of law in doubt, it can consider new aspects of law.¹² So it is fully discretion of the Highcourt as mentioned Order 46 of the civil procedure code. It as discretion to refuse to answer the question are even power to quash it.

Review

The meaning of review:- It is the process of judicial reexamination of a case by the same court and by the same

judge who has passed the judgment or order. Sec 114 of CPC gives a substantive right of review in certain circumstances and the procedure to be followed for review is laid down in Order 47 of the code. The general rule is that once a judgment is signed and pronounced by the court, that court ceases to have control over the matter. The court passing the judgment or order cannot later alter its pronouncement. But the power to review is an exception to this general rule.¹³ An aggrieved party. Can file an application for review in the same court where the decree has been passed. In the Common parlance the word review means to re consider, to look again or to reexamine. This section enables the court to review its own judgment in case of any error or mistake made with regard to the decision rendered, to rectify the same. Section 114 is substantive, the procedure for which is provided in Order 47. Review is not to be taken lightly. It is a very serious step. The power of review has to be taken with great care and caution.

Object of Review

The procedure of review has been embedded in the legal system to correct and prevent miscarriage.¹⁴ The review application is not an appeal or revision made to the superior court, but it is a request to recall and reconsider the decision made before the same court. If the judge who decided is present in the court then he alone has jurisdiction to review the matter decided by him.

He is the best to reconsider the case as he may be able to remember what was argued before him and what was not mentioned in the case there fore he alone should hear the review petition.

Grounds of Review

Rule 1 Order 47 lays down the grounds on which an application for review of a judgment is maintainable:-

1. On the discovery of new important matter or evidence. Court can review it's judgment. when some new and important matter or evidence is discovered by the applicant which could not be produced or was not available at the time of passing the decree .
2. When the mistake or error are apparent on the face of the record then the court may review it's judgment or decree. Error may be a fact or law.¹⁵ In Thungabhadra industries limited V Government of AP¹⁶, Supreme court observed that "a review is by no means an appeal in disguise where by an erroneous decision is reheard and correct, but lies only for patent error.
3. Other sufficient reason:- Any other sufficient reason must mean a " reason sufficient on grounds specified in the rule" for example where the statement in the judgment is not correct or where the court had failed to consider a material issue, fact or evidence etc. So it could be of any reason which the court feels sufficient to review it's judgment in order to avoid a miscarriage of justice.

The power of Review is not an inherent Right

It is well settled matter that the power to review is not an inherent power. It is conferred by law either expressly or by necessary implication. It is the duty of the court to correct grave and palpable errors committed by it.¹⁷ So it is empowered to review and to undo in justice.

Limitation period of Review

The limitation period for filing an application for review is thirtydays.

Revision

Sec115 of the CPC 1908 empowers the Highcourt with Revisional jurisdiction. The dictionary meaning of the word revision is to revise, to look again, to go through a matter carefully and correctly and correct where necessary.¹

Object of Revision

The object of Sec 115 is to prevent subordinate court from

acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. The power of High court to see that the proceedings of the subordinate court are conducted in accordance with law and within the bounds of the jurisdiction and infurtherence of justice.¹⁹ It enables the High court to correct the error of jurisdiction committed by the subordinate court. This provision of revision provides an opportunity to the aggrieved party to get their non appealable orders rectified. Revisional power is exercised when no appeal lies to the High court. High court can exercise the revisional power even suo moto.²⁰

Limitation period

Limitation period for revision application is 90 days. The ground for revision will be mainly on jurisdiction.

Highlights

1. Reference is made by a subordinate court to the High court where there is doubt regarding the question of law.
2. Review is made by the same court which has passed the decree to rectify the mistake or error on the record.
3. Revision application is made only to High court when the decree passed by subordinate court is not in accordance with appropriate jurisdiction.²¹

CONCLUSION

Application for review revision and reference do not deal with facts or evidence of the case they are only based on technical grounds. To err is human. Every human being commits a mistake. Judges are also human beings so there are chances for them to commit mistake. In such cases these provisions well help the judges in order to correct the mistakes. So Sec 113, 114, 115 of CPC embedded in the legal system in order to maintain the fairness and accuracy of the justice system.

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