



FACULTY OF JURIDICAL SCIENCES

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Subject Name- Drafting, Pleading and conveyancing

SUBJECT CODE- BAL-703

Course- BA LLB, VII Sem

LECTURE 14

Grounds of Appeal:

A memorandum of appeal is meant to be a statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the court that such and such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. The parties concerned and their legal advisers should concentrate and focus their attention on the essential feature of cases so as to facilitate speedy and consequently, cheap administration of justice. (Kapil Deo Shukla V. state of Uttar Pradesh, 1958 SC R 640) Memorandum Appeal consist of :- (1) The formal part, (2) The material part, (3) The Relief,

Revision :- Section 115 of the Code of Civil Procedure empowers A High Court to entertain a revision in any case decided by a subordinate Court in certain circumstances. This jurisdiction is known as revisional jurisdiction of the High court .Revision meaning the action of revising, especially critically or careful examination or perusal with a view to correcting or improving. In Major S.S Khanna v. Brig F.J Dillon, the Court stated “The section consists of two parts, the first prescribes the conditions in which the jurisdiction of the High Court arises, i.e. there is a case decided by a subordinate Court in which no appeal lies to the High Court, the second sets out the circumstances in which no appeal lies to the High court, the second out the circumstances in which the Jurisdiction may be exercised.” For the effective exercise of the High court’s superintending and visitorial powers over subordinate courts, this revisional jurisdiction has been conferred by the High Court under S.115; the powers given are clearly limited to the keeping of subordinate courts within the bound of their jurisdiction.It is a part of general appellate jurisdiction of the High court though the jurisdiction is strictly restricted by the terms of S.115 investing it.

Though revisional Jurisdiction is only a part of appellate jurisdiction, it cannot be equated with full that of a full fledged appeal. Section 115 authorizes the High Court to satisfy on three matters:

- (i) That the order of the subordinate court is within jurisdiction.
- (ii) That the case is one in which the court ought to exercises its jurisdiction;
- (iii) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of the law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

In *Pandurang Ramchandra Manddik v. Maruti ramchandra Ghatge*, it was held that "...But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High court under S. 115." Object : Any illegality ,irregularity or impropriety coming to the notice of High court has the jurisdiction to the High Court to examine the records relating to the "any order" and/or proceedings is capable of being corrected by the High Court by passing such appropriate order or direction as the law requires and the justice demands but only limitation on the scope of the High Court's jurisdiction is that the order or proceeding sought to be scrutinized by the subordinate court .Revisional Jurisdiction doesn't allow High Court to interfere and correct errors of facts or of law.When the order is within the Jurisdiction of the subordinate Court, even if the order is right or wrong or in accordance with the law or not, unless it has exercised its jurisdiction illegally or with material irregularity the high Court has no jurisdiction to interfere.

The high Court will not interfere in revision until it comes to the conclusion that the impugned order has occasioned a failure of justice or has caused an irreparable injury to the party against when it is made.

The revisional power under Section 115 of the Code is clearly is the nature of a power to issue a writ of certiorari.Its ambit is not as large as certiorari as revisional Jurisdiction can only be exercised in the failure of Jurisdictional error but not in any other manner. If we go to the literal meaning, "to revise" stands for "to look again" or "to look repeatedly at" or "to go through a matter carefully and correct where necessary". The High Court has been empowered with the revisional jurisdiction under section 115 of the Code of Civil Procedure,1908. Conditions Section 115 of the Code of Civil Procedure Code lays down all the conditions when the High Court can exercise its revisional jurisdiction: The case must be decided.

The revisional jurisdiction is exercised when no appeal lies in the case decided by the subordinate court. The subordinate court has decided such case by: Exercise of jurisdiction which is not vested to that court by law., or It has failed to exercise the vested jurisdiction, or Illegal exercise of the vested power or with immaterial irregularity.

MCQs

i. Principle: In the case of alternative promises, one branch of which is legal and the other illegal, the legal branch alone can be enforced. Facts: Mahendra and Surendra agree that Mahendra shall pay Surendra Rs.1,000 for which Surendra shall afterwards deliver to Mahendra rice or smuggled opium. Which is a valid contract?

- a. To deliver smuggle opium
- b. To deliver rice
- c. Both a and b
- d. none of the above

ii. term judicial _____ has nowhere been defined in the statues though it is exercised regularly by courts of law.

- a. discretion
- b. process
- c. interpretation
- d. activism

iii. Supreme Court in the case of _____ it is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

- a. State of M.P. v. Munna Chaubey
- b. Kalyan Chandra Sarkar v. Rajesh Ranjan
- c. Ramji Dayawala v. Invest Import
- d. K.K. Velusamy v. N. Palanisamy

iv. Discretion is the _____ or _____ to make official decisions using reason and judgment to choose from among acceptable alternatives

- a. obligation , power
- b. answerability, power
- c. right, duty
- d. duty, right

v. term judicial _____ has nowhere been defined in the statutes though it is exercised regularly by courts of law.

- a. discretion
- b. process
- c. interpretation
- d. activism