

Quadrant II – Notes

Paper Code: CPL 0512

Module Name: Reference, Review, Revision- Special provisions relating to the High Court, Rules

Module No: 11

Reference, Review, Revision- Special provisions relating to the High Court, Rules

Section 113 of the Civil Procedure Code gives power to subordinate Court to state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as thinks fit. There are some conditions which are to be satisfied for reference. According to Order 46 Rule 1 of the Civil Procedure Code, a High court cannot entertain a reference from the subordinate Court unless those conditions are satisfied.

Reference to High Court - (Section 113 of CPC)

Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the Court is satisfied that a case pending before it involve; a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance Regulation or provision is invalid or inoperative, but has not been so declared b; the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the opinion of the High Court.

Reference of question to High Court -

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any all the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. Court may pass decree contingent upon decision of High Court The Court may either stay the proceedings or proceed in the case notwithstanding such reference and may pass a decree or make an order contingent upon the decision of the High Court on the point referred; But no decree order shall be executed in any case in which such reference is made until the receipt of a copy of the judgement of the High Court upon the reference.

3. Judgement of High Court to be transmitted and case disposed of accordingly The High Court, after hearing the parties if they appear and desire to be heard,, shall decide the point so referred, and shall transmit a copy of its judgement, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. Costs of reference to High Court The costs (if any consequent on a reference for the decision of the High Court shall be costs in the case.

4A. Reference to High Court under proviso to section 113 The provisions of rules 2, 3 and 4 shall apply to any reference by the Court under the proviso to section 113 as they apply to a reference under rule 1.

5. Power to alter, etc., decree, of Court making reference Where a case is referred to the High Court, under rule 1 or under the proviso to section 113, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed

or made in the case out of which the reference arose, and make such order as it thinks fit.

6. Power to refer to High Court questions as to jurisdiction in small causes -

(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. Power to District Court to submit for revision proceeding had under mistake as to jurisdiction in small causes -

(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any

requisition which the District Court may make for any record or information for the purposes of this rule.

Review

Sec114, order 47 of CPC lay down the provisions relating to review.

The word review means reconsideration of a decision given by the same court. It is a judicial reexamination of the decision given by the same court under special circumstances. In simple words, review means, rehearing of a case by the same court/ judge.

To whom application for review lies

Review application under order 47, Rule 1 is to be made to the court, which passed the decree or order in question. In case of decree or order passed by the high court judge, reviewing application is to be made to the judge or to his successor-in-office. In case of a decree or order passed by a judge other than a high court judge, the review application is to be made to the judge or to his successor-in-office.

Application for review of judgment

Rule 1 of order 47 of CPC

Any person considering himself aggrieved

- By a decree or order from which an appeal is allowed but from which no appeal has been preferred
- By a decree or order from which no appeal is allowed or
- By a decision on a reference from a court of small causes

Revision sec 115

Sec 115 empowers the high court to call for the records of any case which has been decided by any of its subordinate courts.

This power can be exercised in cases where no appeal lies to the high court
This power is given to the high court for effective exercise of its supervisory jurisdiction.

But high court cannot exercise this power in cases from which appeal is provided.

The object of Revision is to prevent the subordinate court from acting arbitrarily or there is illegality or irregularly in the exercise of its jurisdiction