

Analysis Of The Revisional Powers Of The Civil Court In The Context Of Legal Provisions And Judicial Decisions: Bangladesh Perspective

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ABSTRACT

Revisional jurisdiction constitutes an integral component of the appellate jurisdiction of the High Court Division or the Court of District Judge, as the case may be, and it is exercised in a broad and more expansive sense when the Court's assistance is sought on revision. The power of revision is a form of supervisory authority that encompasses the ability to call records from the lower courts or to dispense complete justice, as stipulated in section 115 of the Code of Civil Procedure, 1908. Generally, the court of revision concentrates with the error of law committed by the subordinate court which occasioning failure of justice, not on facts. Being it is a purely discretionary remedy, the High Court Division or the Court of District Judge, may not interfere even after all conditions of application for revision have been met. This article mainly focuses that which court has revisional jurisdiction, when and how it can be invoked, and what powers can be exercised to ensure justice for all. This research is conducted on the basis of secondary data and is collected from various Court decisions i.e., cases, journals, books, reports etc.

Keywords: Subordinate court, error of law, revisional jurisdiction, scope of interference, ends of justice.

1. Introduction:

As per the definition provided in the dictionary, "to revise" denotes "to look again or repeatedly at"; "to go through carefully and correct where necessary" or "to look over with a view to improving or correcting". Revision means "the action of revising, especially critical or careful examination or perusal with a view to correcting or improving." (Oxford University Press, 2003). As applied to legal matters, the term "revision" refers to something that is somewhat more explicit. More commonly, revision means as the re-examination by a superior court of legal proceedings carried out by a subordinate court.

As per Section 115 of the Code of Civil Procedure, 1908, the High Court Division or the District Judge Court, as applicable, is empowered to verify three criteria, namely (a) the lower court's order falls within its jurisdiction, (b) the case is one that demands the court's exercise of jurisdiction, and (c) the court has not acted illegally or exercised its jurisdiction in a substantially irregular manner (Keshardeo v. Radha Kissen, 1953). If the revisional court is satisfied with these three issues, it does not have the authority to intervene even if it strongly disagrees with the subordinate court's ruling on factual or legal issues. It is well-established that where there is no jurisdictional error, the judgment cannot be reversed because a court has the authority to make both correct as well as incorrect decisions (N.S Venkatagiri Ayyangar v. Hindu Religious Endowments Board, 1948). When an error of law results in an erroneous decision that causes a failure of justice, the power of the High Court Division or the court of District Judge is not restricted and the whole proceeding can be scrutinized. The revisional court is empowered to issue orders in accordance with the facts and circumstances of the case, and may issue any consequential orders that are deemed necessary based on those facts and circumstances. The revisional court has broad authority to uphold justice in a case (Madinullah v. Abdul Mannan, 2001). It may exercise the power of the appellate court (Meher Banu v. Abdul Barek, 1988). It may take additional evidence and may finally dispose of the case, pass an order of remand, it can allow withdrawal of suit with leave to sue afresh, or pass any other order which may require for ensuring justice (Jatindra v. Krishnadhan, 1953). As a general rule, in judging the correctness of a decision, the revisional court will confine itself to the state of things at the time when the subordinate court gave the decision (Keshavlal v. Mohanlal, 1968). However, it may depart

from this rule to shorten the litigation or to attain the ends of justice, power to make any order, however wide, does not confer on the High Court Division in Single Bench to strike down any piece of legislation (*Hosna Jahan v. Shahjahan*, 1999).

2. Object of the revisional power:

The primary object of the revisional power is to maintain the subordinate courts within their jurisdiction or scope of authority, to stop them from acting in an unconstitutional, arbitrary or irregular manner when exercising their jurisdiction and to observe them as a watchdog or keeper whether they exceed their limit of jurisdiction or not. It empowers the High Court Division or the Court of District Judge, as the case may be, to provide the necessary remedies to the litigants of the suit after correction of errors of law, when necessary, committed by the subordinate courts. In the case of *Manick Chandra v. Debdas Nandy*, 1986 it was held that, "revisional jurisdiction is conferred upon the revisional Court for the effective exercise of superintending and visitatorial powers. At the same time, the judges of the lower courts have perfect jurisdiction to decide a case, and even if they decide wrongly, they do not commit jurisdictional error." In the case of *Pandurang Ramchandra Mandlik v. Maruti Ramchandra Ghatge*, 1966, Gajendragadkar, J. rightly propounded, "while exercising its jurisdiction under S. 115, it is not competent to the revisional court to correct errors of fact, however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself." Revisional jurisdiction is not intended to allow the High Court Division or District Judge Court, as the case may be, to interfere and correct any error of facts (*Rajah Amir Hassan Khan v. Sheo Buksh Singh*, 1884). Therefore, in order to ensure the administration of justice and adherence to the principles of the rule of law and equity, the High Court Division or the Court of District Judge has been bestowed with revisional authority under section 115. The purpose of this jurisdiction is to guarantee that subordinate courts do not engage in arbitrary, illegal, capricious, irregular, or ultra vires conducts.

3.1 Revisional Power of the High Court Division (HCD):

Section 115(1) of the Code of Civil Procedure talks about the revisional power of the High Court Division and it provides that "the High Court Division may, on the application of any party aggrieved, call for the record of any suit or proceeding, in which a decree or an order has been passed by a Court of District Judge or Additional District Judge, or a decree has been passed by a Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, from which no appeal lies; and if such Court appears to have committed any error of law resulting in an error in such decree or order occasioning failure of justice, the High Court Division may, revise such decree or order and make such order in the suit or proceeding as it thinks fit."

Thus, a revision petition may be filed to the High Court Division-

- (i). by any person to the suit or appeal who is aggrieved by such order or decree,
- (ii). against an order issued by a Court of District Judge or Additional District Judge from which no appeal lies.
- (iii). against a decree issued by a Court of District Judge, Additional District Judge, Joint District Judge, Senior Assistant Judge or Assistant Judge, provided that no appeal is available against it.

3.2 Revisional Power of the Court of District Judge:

The Code of Civil Procedure (Third Amendment) Act of 2003 incorporated the section 115(2) to reduce the burdens of litigants and to minimize the overflow effects of revision in the High Court Division. Section 115(2) of the Code prescribes that, "the Court of District Judge may, on the application of any person aggrieved, call for the record of any suit or proceeding, in which an order has been passed by a Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, from which no appeal lies; and if such Court appears to have committed any error of law resulting in an error in such order occasioning failure of justice, the Court of District Judge may, revise such order and, make such order as it thinks fit."

Therefore, a revision petition may be filed to the Court of District Judge -

- (i). by any person to the suit or appeal who is aggrieved by such order.
- (ii). against an order issued by the Court of Joint District Judge, Senior Assistant Judge or Assistant Judge, provided that no appeal lies against it.

3.3 Application for second revision to the High Court Division:

In the event that if an individual is dissatisfied with the revisional order issued by the District Judge or Additional District Judge, then he or she may file an application for second revision before the High Court Division, provided that the latter grants leave for revision on the basis of an error of law or a significant question of law that has resulted in an erroneous decision leading to a failure of justice. section (4) of section 115 provides that "an application to the High Court Division for revision of an order of the District Judge or Additional District Judge, as the case may be, made under sub-section (2) or (3) shall lie, where the High Court Division grants leave for revision on an error of an important question of law resulting in an erroneous decision occasioning failure of justice, and the High Court Division may make such order in the suit or proceeding as it thinks fit." The expression "grant leave" does not really add any further limitation as the High Court Division issues rule on being prima facie satisfied about error of law and in granting leave the High Court Division also have to be prima facie satisfied about the error of law (*Mahmulul* 2006).

4.1 Conditions of application for revision:

The position with reference to section 115 may be summarized in the following proposition:

The High Court Division or the Court of District Judge, functioning as a revisional Court may, in respect of any state of facts judicially considered by a subordinate Court and has given a decision, make such order as it thinks fit, if in the opinion of the revisional Court, such Court in giving the decision-

- (a) has exercised or assumed a jurisdiction not vested in it by law, or
- (b) has failed to exercise or declined to assume a jurisdiction vested in it by law, or
- (c) has taken a procedural action throughout the course of exercising its jurisdiction which is contrary to a mandatory provision of the law or has neglected to take a legal requirement's needed action, or
- (d) has taken a procedural action while exercising its jurisdiction that is against a general principle of law or a directory provision of the law and that action has ultimately provided one party an advantage over the other that party would not have had but for the fact that it was taken.

When a complaint is made to the revisional Court that a subordinate Court has acted any of the four ways mentioned above and the revisional Court is of the opinion that the Court appears to have acted as complained, it may call for the record for the purpose of ascertaining whether the complaint is correct or not, but it is not bound to call for the record, if it can satisfactorily ascertain by other means the facts necessary for a decision of the point raised (Zafar Ahmed Vs. Abdul Kahliq, 1964).

Therefore, in the exercise of revisional jurisdiction pursuant to section 115 of the Code, three prerequisites must be met. Firstly, there must be an error of law resulting in an error in the decision. Secondly, by that error a failure of justice occasioned, mere error of law is not the only ground for interference in revisional jurisdiction. Thirdly, the decision should not be an appealable one (Waliullah Vs. Hasina Begum and others, 2003). In the case of Md. Shajahan Khan Vs. A.D.C. (Rev) & Ors., 2003 the court said that "it is well-settled that once the conditions in section 115 of the Code are satisfied then the revisional Court's jurisdiction is established, the proceedings as a whole from start to finish can be scrutinized and any order necessary for doing justice may be passed. There is no limit to the area in which the revisional power is to be exercised by the High Court Division or the Court of District Judge, as the case may be, in the facts and circumstances of each case."

4.2 Error of law that is apparent from the record:

Revisional Court has power to interfere when decision of the subordinate court is bad for want of jurisdiction (Jabbar Ali Vs. Bahadur Bepari, 1957). If the subordinate court, though clearly possessing jurisdiction violates, disregards or overlooks any law or procedure prescribing the mode in which the jurisdiction is to be exercised, it acts illegally and with irregularity in the exercise of its jurisdiction (Jnananda Sudar Nandi Vs. Naravan Chy. Sardar, 1955). In the case of Nusserwanjee Pestonee v. Meer Mynoodeen Khan, 1855 the Privy Council observed that, "wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act, it is a universal principle that these terms must be complied with in order to create and raise the jurisdiction, for if they be not complied with, the jurisdiction does not arise." When a party has got a right of appeal against an order, he cannot maintain an application under sec. 151, for reversal of that order and that the trial Court acted in the exercise of its jurisdiction with material irregularity in entertaining the said application under sec. 151 of the C.P.C (Mansura Khatun Vs. Md. Raja Mia, 1949). Where the subordinate Court wrongly dismissed an application u/s. 151, for restitution but lower appellate Court on an appeal being filed before it though no appeal lay before the lower appellate Court, the revisional Court can set aside the lower appellate Court's order and also set aside the wrong order of the subordinate Court (Humijuddin Howlader Vs. Mominuddin Shaikh, 1958). The order of the lower Appellate Court summarily rejecting the petitioner's prayer for staying the operation of an interim injunction granted by the trial Court ex-parte in the absence of the petitioner and without affording a further opportunity to the petitioner for hearing the main application for temporary injunction without assigning any reason is clearly an irregular order which suffers from apparent material irregularity and such order is not only covered by the provisions of section 115, but can also be rectified thereunder (DCCI Vs. Messer's Rahman Mercantile Agencies and another, 1980). Trial Court disregarded the adjournment application of defendant and ordered ex-parte proceedings and passed ex-parte decree. Trial Court besides lacking territorial jurisdiction found to have committed irregularities and also ignoring legal requirements of proof (Chand Biswas and others Vs. Abdul Khaleque Sheikh and others, 1998).

4.3 Occasion of failure of justice by error of Law:

When a subordinate court committed any error law that led to an error in the decree or order which caused injustice, a revision application may be made. If the lower court permits the ex-parte interim injunction to run indefinitely without hearing on the temporary injunction sought by the aggrieved party, the revisional court can intervene under its revisional jurisdiction. Failure to restore possession to a person illegally dispossessed is not only an error of law but involves failure to exercise jurisdiction so as to attract section 115 for the revisional Court to interfere (Dr. Kudrat Ali Vs. Ma. Munsar Ali, 1964). Any step taken by a subordinate court which will render, if not set aside the final decision infructuous and without jurisdiction, can be interfered with by the revisional Court (Zafar Ahmed Vs. Abdul Khaliq, 1964). There is nothing in the Code to show that the power of revision under section 115 is in any way controlled by the provisions of rules 1 and 2 of Order 47, of

the Code or that such powers are not intended to apply to disallowing a review application. An order passed by a subordinate Court pursuant to Order. 47, rejecting an application for review is open to revision under section 115 of the Code (Binod Bihari Chowdhury Vs. Nalini Ranjan Bal, 1956). The revisional Court is not powerless to correct the irregularities of trial Court (Chowdhury Muhammad Anwar Vs. Sahibzada Ghulam Hussain Khan, 1969). When the plaintiff succeeded in establishing his title and possession by material evidences on record, the suit cannot be dismissed merely on the basis of minor variation in the description of the boundaries of the suit land. Interference by the High Court Division in reversing the concurrent findings of the trial Court as well as of the lower appellate Court in exercise of revisional jurisdiction is perfectly justified to prevent failure of justice (Mofizullah Bhuiyan and others Vs. Sree Narayan Chandra Roy and others, 1998). Amendment of plaint can be allowed by applying the discretionary power of the Court but where the amendment is granted arbitrarily, that amounts to an illegal exercise of jurisdiction and the revisional Court can interfere under section 115 of the Code to give the necessary relief and to prevent failure of justice (Alokeshi Banik Vs. Aftabuddin, 1961).

4.4 Alternative remedy by appeal:

As the revisional power is a discretionary one, the High Court Division or the Court of District Judge, in the absence of exceptional circumstances, will not entertain revisional application when alternative remedy is available, even though the conditions for interference are fulfilled (Renu Begum v. Leakat Ali, 50 DLR (AD) 142). However, the other remedy must be a certain and conclusive remedy allowed by law. If the other remedy is a doubtful one, the High Court Division may interfere (Ghulam v. Dwarka, ILR 18 All 163). In exceptional cases it will interfere even though alternative remedy is available in order to avoid unnecessary hardship or multiplicity of proceedings or to give efficacious and complete relief (Indra v. Hari, ILR 58 Cal 55). A revision also lies against an order of any subordinate court to the Court of District Judge or High Court as the case may be in which the Legislature has not provided provisions for any appeal (Bankim Ch. Basak Vs. Ganesh Ch. Basak, 1953). Where an appeal lay to some other Court and could have been filed if the applicant was diligent, he has not done so, and then the revisional Court should not ordinarily entertain a revision even if the order or decision complained of does not amount to a decree. Similarly, where an aggrieved party could have brought a separate suit to challenge order sought to be revised, the revisional Court will not as a rule, interfere in revision (Municipal Committee, Bahawalpur Vs. Sk. Aziz Elahi, 1970). Section 115 should be used in a limited and in a sparing manner and must be avoided where the Code provides alternative remedy by appeal (Azizur Rahman Vs. Janata Bank, 1976). When a party has got a right of appeal against an order, he cannot maintain an application under sec. 115, for reversal of that order (Mansura Khatun Vs. Md: Raja Mia, 1949). No revisional application will lie to the revisional Court unless an appeal to the Court of Appeal below, to which an appeal lies, has been preferred and disposed of (Janab Ali Farazi Vs. Maizuddin, 1955). An order passed under section 151 of the Code, not being appealable, the proper course is to approach the revisional court for interference in revision (Province of E.B. Vs. Priya Nath Guha, 1955).

5.1 Scope of interference in revision:

The High Court Division or the Court of District Judge, as applicable, possesses the authority to intervene with the decision of the lower court solely in cases where there is a mis-reading or ignoring of evidence, or a misinterpretation of a document. However, in the absence of such deficiencies, the revisional Court lacks the competence to interfere with the judgment of the Court below (Sufia Khatun Vs. Amin Hossain Mondal and others, 2005). In the case of Abdur Rasid v. Abdul Goni, 1951 it was held that "error in a decision of a subordinate Court does not itself involve that the subordinate Court acted illegally or with material irregularity so as to justify interference under sec. 115; but if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises." Any finding of fact arrived at by the trial Court, though a question of fact, on a misconception of law and non-consideration of material evidence is not immune from interference under Section 115 of the Code (Sontosh Kumar Chakraborty Vs. M.A. Motaleb Hossain, 1984). The revisional Court is within its jurisdiction in reversing the judgment of the lower Court if the same is the result of misreading of the evidence or has been made leaving the legal evidence out of consideration or that while arriving at the decision misconstrued the documentary evidence or left the vital evidence out of consideration without assigning any reason. If the subordinate court's decision does not contain any of the aforementioned defects, the revisional court loses the authority to reverse the finding and decision of the subordinate court (Govt. of Bangladesh Vs. Ershad Ali Moral & Ors., 2004). Unless there is a case of misinterpretation or failure to consider important evidence in the record resulting in an error in the decision leading to a failure of justice, the revisional court cannot intervene with concurrent findings of facts by the trial Court and the lower appeal Court (Rokeya Begum Vs. Md. Abu Zaher & others, 2000). The appellate Court held that the over-writing was made subsequently after the execution of the deed in connivance with the deed-writer. If there is no misreading or misinterpretation of material on record, the revisional court should not interfere with the lower appellate court's finding of facts (Md. Hashim Uddin Mondal and others Vs. Mrs. Noorjahan Bibi and others, 2005). The revisional application under section 115 before the High Court was rejected with the words "the application is rejected." The Supreme Court held that the case was not one which could have been rejected so summarily, without even assigning any reason; for

it did prima face raise a substantial question of law (Messers Chalna Fibre Company Ltd. Vs. Abdul Jabbar, 1968). The provision in section 52(6) of the Cooperative Society Act, 2001 to the effect that no appeal or review will lie against the order passed by the District Judge under section 52(Ka) does not debar the petitioner to seek relief before the High Court Division under section 115(1) of the Code. The High Court Division, in exercise of revisional power, can give any relief to which the aggrieved party is entitled under the Cooperative Society Act, 2001 (Md. Kalam Sarder Vs. Govt. of Bangladesh, 2004).

5.2 Scope of suo motu relief in revision:

There is an explicit term in the Code that “on the application of any party aggrieved” that means revisional power can be exercised by the Court on the application of any aggrieved party. Previously, the High Court had power to interfere with the decisions of subordinate court on application by parties and also suo motu (Safaruddin v. Fazul Hag, 1997). This approach was compatible with the provisions of article 109 of the Bangladesh Constitution. According to an amendment that was made to the Code in 2003, the High Court Division and the District Judge now have the ability to exercise revisional power and they can do so on the basis of an application made by any party that feels they have been aggrieved. Thus, the language of the amended sec.115 apparently does not permit the High Court Division or District Judge to exercise revisional power suo motu. However, as the constitutional jurisdiction of the High Court Division cannot be taken away by ordinary legislation, notwithstanding the language of sec. 115, the High Court Division shall always have supervisory power over the courts subordinate to it, which can be exercised by the High Court Division on application as well as suo motu (Abdus Sattar v. Abdun Noor, 1997). The Revisional Court is clothed with supplementary power of superintendence and control over judgment; order and action of courts subordinate to it and do complete justice between the parties before it. Even if neither side points out the error, the revisional court may still correct any illegality that the lower court committed (Ful Meher Bibi & Ors. Vs. Abdul Wahab & Ors., 2005). We noticed different intentions have been reflected by the different judgments of the Court regarding the suo motu relief in revision. In the case of Darasatullah and others Vs. Manik Mondal and others, 1984 it was held that, the powers of the revisional Court under section 115, are very wide and action can be taken under this section even without application by the aggrieved party. If the other requirements specified in the section are fulfilled, it does not prevent the Revisional Court from using its power of revision suo motu. The Court of revision possesses the authority to call for records and correct legal errors in a case that has been brought to its attention, or suo motu, in cases where the impugned judgment has been issued by a lower court that is not subject to appeal (Ranjit Kumar Rakshit Vs. Sudhir Kumar Chowdhury, 1986). In the case of Safaruddin and others Vs. Fazlul Huq and others, 1997 it was held that the court of revision is empowered to exercise its jurisdiction of revision upon the petition of a party or even own initiative. It may also call for the records of a case from the lower court and after analyzing them, issue whatever rulings are appropriate and suitable for the particular case. If necessary, a suit may be transferred suo motu without application in accordance with section 24 of the Code.

5.3 Scope of interference with remand order in revision:

The adherence to Rule 4(2) of Order 20 of the Code of Civil Procedure is mandatory for both the appellate and revisional courts when remanding a case. The attainment of justice would be ensured by remanding the case back to the trial court for the purpose of issuing a judgment that conforms to the relevant provisions. (Mozibar Rahman Molla Vs. Md. Rehazuddin and Ors., 2003). When it appears that the plaintiffs filed a petition before the Court of revisional stating that they failed to produce the patta and kabala in the trial Court but filed the said two documents in the Court of appeal below but the said documents were not considered, the revisional Court was justified in sending the case on remand to the trial Court to take initiatives to prove the said documents. (Narayan Chandra Ghosh & Ors. Vs. Moksed Mollah & Ors., 2005). When evidence has been led by both the parties and trial Court below arrived at conflicting findings it was the revisional Court to see whether trial Court's finding had been reversed on proper consideration of the evidence or not. When evidence on all material points is there on record, the revisional Court is not justified in sending the case back to the trial Court for reconsidering the matter (Abdul Awal Khan Vs. Md. Sadu Mia and others, 1986). Order for remand of a suit by the appellate Court below in the face of fault with the findings of the trial Court need not be interfered with. No interference is called for merely because the appellate Court did not give any independent findings on the fact of possession and non-joinder of necessary party. Since the order of remand has not occasioned any miscarriage of justice, the same cannot be set aside under section 115 of the Code of Civil Procedure by the revisional Court in exercise of revisional jurisdiction (Chand Mia and others Vs. Md. Shamsuddin & others, 1999).

6.1 Interference by revisional Court when rationality demands:

When the facts and circumstances require the interference, the revisional court can interfere to fulfill the demand of the circumstances as the revisional courts are designed with necessary powers for securing the ends of justice. We have seen in the various cases where the revisional court interfered, when the court feels that interference is necessary. In the case of Rajdhani Unnayan Kartipakhya (RAJUK) and others Vs. Md. Lutfar Rahman and Ors. 2005 it was held that, “a study of the decisions rendered, reason assigned in rendering

decisions and conclusion reached by Appellate Judge does not come into sight that those had been founded on any misconception, misapplication and misapprehension of law or misinterpretation of any material document or otherwise those were wrong handed and by those decisions and conclusion a failure of justice has been occasioned warranting interference by the High Court Division in exercise of Revisional Jurisdiction engrafted in section 115 of the Code." The trial court was not justified in ruling in favor of the plaintiff when it is acknowledged that the defendants are the heirs of the original owner of the disputed land, that they are in possession of it, that records of right have been prepared in their names, and that there is no convincing evidence to support the plaintiff's claim that the defendants were in possession of the suit land as a licensee. (Abul Hossain & Ors. Vs. Nur Khatoon & Ors., 2004). The lower courts have reached a concurrent decision that the plaintiffs lack prima facie title and possession of the land in question. The appellate court has additionally determined that the plaintiffs have not been in possession of the land for at least 60 years, and that the Subordinate Judge acted within legal bounds by issuing the temporary injunction preventing the plaintiffs from accessing the land until the suit is resolved. Moreso, the concurrent finding of facts is binding upon the High Court Division (Shah Abdul Latif and others Vs. Govt. of Bangladesh, 2003). When a decree has been passed under the section 9 of the S.R Act, 1877 in favor of the petitioner, it is obligatory upon the opposite party unless it is varied by an order passed by a court exercising revisional jurisdiction. It is a fit case for the Bar Council to deal with the case of inefficiency of the learned Advocates who filed appeal against the judgment and decree under section 9 of the S. R Act. The Bar Council may also suo motu start a proceeding against the learned Advocates in this respect. Similarly, it cannot even be imagined that a District Judge shall not know the law that under section 9 of the S.R Act, no appeal lies. Thus, the District Judge who passed the order in appeal was asked to show cause as to why legal action shall not be taken against him for passing the said impugned order which is apparently not maintainable and for putting the parties in utter harassment similar to inefficiency to the greatest extent (SAM Mahbub Elahi Md. Shah Alam, 2003). It is established fact that brother and mother of a deceased Hindu governed by the Dayabagha Law are heirs as 'Sapindas". The claims of such heirs however inferior to those of said opposite party's wife and son, their right to citation and to be present in the proceeding for a succession certificate could not be denied. So, the impugned order of learned court below rejecting the application for addition on the view that the applicants were not heirs of the deceased is wholly erroneous and cannot be sustained (Prodip Kumar Dutta & Ors. Vs. Mira Rani Dutta & Ors., 2004). It is clear from witness testimony that the case land was never divided in accordance with the law. Although the pre-emptor was a co-sharer at the time when the pre-emption application was made, both of the lower courts held that the pre-emptor committed a grave legal error that resulted in an injustice by only partially granting the application for pre-emption rather than granting it in its entirety (Akhtaruzzaman Vs. Abdur Rashid Khan, 2005). Both the Courts below committed mistake in rejecting the plaint outright on the ground of res judicata without proper adjudication after taking evidence for disposal of the suit on the decision of res judicata issue without holding trial, resulted erroneous decision which occasioned failure of justice (Md. Echmail Howlader & Ors. Vs. Bangladesh, 2004). The plaintiffs are found to be in possession of land and the defendants subsequently dispossessed them by taking kobala or purchase deed from the heirs of owner. If defendants want to seek relief on the basis of their purchase deed, they are legally entitled to seek partition through the Court. In no way they can be allowed to take law in their own hands and invade possession of other co-sharers in the lands (Md. Tofazzal Hossain and Ors. Vs. Shamima Aktar and Ors., 2004). The learned Joint District Judge issued an order on an appeal, not in the original suit. In that light, it is unquestionably true that the Joint District Judge effectively handled the District Judge or Additional District Judge's responsibilities in deciding the miscellaneous appeal. However, it should be remembered that the revisional powers are not inherent; rather, they are granted by statute, and since they are a result of statute, a Court cannot exercise them unless those powers are expressly granted (Gouranga Chandra Dey Vs. Deputy Commissioner & Ors., 2004).

6.2 Service of notice to the parties concerned:

Issue of notice on the parties concerned not being provided for by sec.115 but natural justice however demands that when an order to be made will operate to the prejudice of another, notice to that person before passing of the order should be served (Fazlur Rahman Vs. Rajab Ali, 1978)). Service of notice under section 115 of the code on the opposite party though not a requirement of law but should be served on principle of natural justice (Dijendra Lal Vs. Abu Zafar, 1978). Only the opposite party or parties who were previously identified as plaintiff or plaintiffs who had been granted a decree must get the notice that is required to be issued under rule 14 of Order 9 of the Code. Plaintiffs- decree holders were only the opposite parties upon whom notices are required to be served and other defendants- opposite parties who were not plaintiffs decree holders and not beneficiaries of decree are not required to be served with notices. Decision rendered and conclusion reached by learned Assistant Judge in dispensing with service of notices upon defendants-opposite parties do neither appear to have suffered from any illegality, legal infinity and error of law nor any failure of justice seem to have been occasioned (A. Gani and others Vs. Abdul Jabbar Kha and others, 2003). Any variation by way of addition or alteration of the order complained against without giving any opportunity to the opposite party cannot be sustained. It is a well-known practice to issue Rule on the respondent or opposite party whenever the need for such variation is felt by the Court at the time hearing for admission. Law does not permit to allow summarily allowing the revisional application without issue of rule to the other party. High Court Division is held by the apex Court not justified in summarily allowing the revision without issue of the rule behind the back of the

respondent. Again, the apex Court observed no Court is supposed to pass infructuous decree (Jabbar Jute Mills Ltd. Vs. Md. Abul Kashem and another, 2005). Therefore, before deciding whether to uphold or modify the lower court's order, revisional court is required to investigate the case record and notify all parties who may be impacted by its decision.

6.3 Amendment of pleadings or application at the stage of revision:

The Court of Revision preserves the authority to allow either party to modify their pleading or application during any phase of the proceedings, with the intention of ascertaining the real issues in dispute between the parties. In the case of *Al-Haj Din Islam Vs. Md. Osman Gani*, 2005 it was held that "proposed amendment definitely relates to new facts that happened after institution of the suit and submission of written statement. If the plaintiff is not allowed to incorporate such subsequent events, he will not be able to lead any evidence and prove such events at the trial of the suit." In a pending civil revision case, the plaintiff-petitioner filed an application to alter the plaintiff's prayer portion, seeking for a decree affirming possession and a permanent injunction that would prevent the defendant-opposite parties from disturbing with the plaintiff's possession of the suit land. Based on a ruling by the Appellate Division of the Supreme Court of Bangladesh, the application for amendment of plaintiff was granted because there is no legal prohibition against allowing such amendment of plaintiff at the revisional stage (*Kajol Das and others Vs. Manowara Begum and Ors.* 2003). Since the plaintiffs are in possession of the land in dispute, there is no barrier to granting the petition for joint possession with defendants along with declaration of title when amendment of the pleading can be allowed at any stage of the proceeding and if the amendment is allowed it would neither change the nature and character of the suit nor the plaintiff and when it is crucial to resolve the issues involved in the suit (*Ramesh Chandra Mondal and Ors. Vs. Hemayet Ali Sheikh and Ors.* 2004). The rejection of the amendment of petition was subject to revision under Section 115 of the Code. As the plaintiff-opposite parties had the option to seek a remedy in court, the inherent power under Section 151 of the Code could not be invoked at all. Therefore, the decision made by the learned subordinate judge to allow the application presented under Section 151 of the Code constitutes a substantial legal error (*Abdul Hannan and another Vs. Sharfuddin Md. Reza Hai & others*, 2003). Order of the trial court refusing a petition for correction of a judgment and decree under Section 152 of the Code taking the view that the judgment was "clear and unambiguous". But an apparent mistake "clear and unambiguous" was found to have been made in the judgment. This mistake or error found to have been caused by accident slip, correction thereof is within its scope and ambit. Where there is no reason to hold that the application made by the defendant for amendment of the written statement was a malafied one or that it was belated or that it did not relate to the point in controversy, the amendment should be granted and an order rejecting the prayer for amendment is a material irregularity within the scope of section 115 of the Code (*Sadanandan Ghose Vs. Central Bank of India*, 1957).

6.4 Admissibility of additional evidence at revisional stage:

The Court of revision may, in suitable circumstances, take into account additional evidence in order to arrive at the most appropriate decision (*MD, Janata Bank Vs. Md. Bazlur Rahman and others*, 1998). In the case of *Swastik Oil Mills Ltd. v. CST*, 1968 it was held that, "Whenever a power is conferred on an authority to revise an order, the authority is entitled to examine the correctness, legality and propriety of the order and to pass such suitable orders as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and, for that purpose, admit additional evidence. Once those powers are invoked, the actual interference must be based on sufficient grounds, and, if it is considered necessary that some additional enquiry should be made to arrive at a proper and just decision, there can be no bar to the revising authority holding a further enquiry or directing such an enquiry to be held by some other appropriate authority." In a revisional proceedings the Court can decide only the dispute out of which the proceeding arose. In the instant case the dispute being related to the admissibility of additional evidence at the appellate stage should have been decided by the Court of revision instead of reversing the trial court's decision. In doing so, the revisional court exceeded its jurisdiction; hence, the judgment in question of the High Court Division is struck down and the appeal is permitted with respect to the admissibility of additional evidence under Rule 27 of Order 41 of the CPC (*Raziur Rahman Chowdhury (Md.) Vs. Bangladesh and others*, 2000).

7. Interference with findings of fact under revisional jurisdiction:

Generally, a court by exercising revisional jurisdiction does not interfere with the findings of facts but when such findings are proven to be erroneous due to a misinterpretation of the evidence on record, such interference becomes necessary for the purposes of ensuring justice (*Shahabuddin Bhuiyan and others Vs. Madar Mia & others*, 2000). Except as provided in section 115 of the Code, the High Court Division or the Court of District Judge may not use its revisional competence to reverse the decisions of both the trial court and the lower appellate court. It cannot superimpose itself as a third Court for fresh appreciation of evidences (*Shaha Alam Vs. Musamamt Farida Begum*, 1997). Only if there has been a failure of justice and the concurrent findings of fact by the trial court and lower appellate court are incorrect due to the non-consideration or misreading of significant evidence in the record can they be overturned. Without considering the findings of the trial Court,

which are supported by credible and convincing evidence, the lower appellate Court cannot base its decision on conjecture and presumption unrelated to the evidence in the record (*Jahanara Begum Vs. Md. Aminul Islam Chowdhury and others*, 1997). The revisional court cannot intervene with the decision of lower appellate court unless they are perverse and suffer from legal infirmity as a result of non-consideration of important evidence, misinterpretation of a document, or incorrect interpretation of the law (*Mathura Mahan Paul and others Vs. Amulaya Keshore Paul and others*, 2004). The court's revisional jurisdiction precludes it from interfering with the conclusions arrived by the subordinate court on the proper evaluation of material evidence (*Haidernessa and another Vs. Monwara Begum and others*, 1996). The Appellate Division cannot overturn the trial Court's and the lower Appellate Court's findings of fact, which were reached after a thorough examination of the evidence presented at trial and were upheld in revision by the High Court Division, because there is no basis for doing so (*Sadaruddin Mia Vs. Abdul Mannaf Mia and others*, 1998). When the findings of the appellate court below are based on a proper evaluation of evidence on record and the High Court Division has discharged the Rule, there is nothing to interfere with the said judgment (*Abdul Quddus Vs. Nizamudding Ahmed and others*, 1999). The Court's revisional power does not extend to factual determinations based on evidence from a lower appellate court, unless they are perverse (*Golam Rasul Vs. Chan Mohammad*, 2004). Concurrent findings of the subordinate court may be set aside if the same are perverse due to misreading of evidence on record occasioning failure of justice (*Mofizullah Bhuiyan and others Vs. Sree Narayan Chandra Roy and others*, 1999). Whether a bainapatra is genuine or not is a finding of fact which can be decided by proper appreciation of evidence and a court of revision cannot interfere with such a finding of fact (*Md. Fazlul Haque Vs. B. M. Rahman and others*, 1996). The findings of the courts below that the tenant did not come to deposit the rent in time is a finding of fact and cannot be disturbed in a case under section 115 of the Code (*Indra Kumar Paul Vs. Sirajuddin Ahmed*, 1979). Question whether the defendant is defaulter or not is a question of fact and cannot be attacked in revision (*Tafazal Hossain Vs. Md. Yunus Ali Biswas*, 1982). In the case of *Fazlur Rahman & Ors. Vs. Anjab Khan heirs Haji Md. Manir Khan & Ors.* 2005 the court said that, "considering the facts and circumstances of the case, it appears that the transaction in question is not an out and out sale but a deed of exchange and therefore, the pre-emptor is not entitled to pre-empt the suit land under section 24 of the Non-Agricultural Tenancy Act, 1949. The Courts below after giving due consideration of the evidence on record rightly arrived at a finding that the transaction is a deed of exchange and such finding being a finding of fact cannot be disturbed in exercise of revisional jurisdiction." Trial Court denied the claim for pre-emption on limitation grounds, but lower appellate court overruled it, and the H.C.D declined to intervene with the finding of fact when exercising its revisional jurisdiction. After affirming the High Court Division's stance and declaring that this finding of facts did not justify interference in revision, the Appellate Division rejected the appeal (*Sona Mia Vs. Abdul Khaleque*, 1994). In the case of *Govt. of Bangladesh Vs. Chand Mia and others*, 1996 it was decided that, "it is not function of the High Court Division to sit in appeal over the findings of the lower appellate Court in the revisional jurisdiction. The High Court Division is only concerned with the question as to whether the lower appellate Court in giving that finding committed any error of law resulting in the error in the decision occasioning failure of justice or not."

8.1 Limitation on Revisional Jurisdiction

The revisional jurisdiction is constrained to the examination of legal issues exclusively. The court of revision is not empowered by section 115 of the Code to interfere in relation to any 'order' passed by a lower court. The lacuna creates hardship for public litigants but a court of law cannot assume a jurisdiction which is not conferred upon it by the statute (*Gouranga Chandra Dey V. The Deputy Commissioner*, 2005). Section 115 of the Code only refers to the jurisdiction and cannot be invoked to correct simple legal and factual errors made by a subordinate court. Even if the findings of the learned subordinate Judge were wrong, the revisional Court would have no Jurisdiction to exercise power under section 115 of the Code to correct any such error having no connection with any question of jurisdiction (*Karnaphuli Traders Ltd. Vs. Toya Engineering Corporation*, 1973). The court of revision is not authorized to reverse the decision of the subordinate court unless the subordinate court exceeded its legal jurisdiction or failed to exercise its jurisdiction that was granted to it, acted illegally in the exercise of jurisdiction, which would constitute a violation of some legal provisions, or engaged in material irregularity in the exercise of its jurisdiction. The decision of the subordinate Court whether right or wrong shall be final unless such decision can be brought within the three conditions provided in sec. 115 (*Syed Ahmed Molla Vs. Halima Begum and others*, 1979). From the judgment of the Sub-Judge passed in a case transferred to the said Sub-Judge by the District Judge, no revision would lie to the District Judge u/s 115 (2), of the Code. The District Judge cannot entertain a revisional application u/s. 115(3) of the CPC, against his own judgment and order (*Mohammad Eshaque Vs. Ruhul Amin and others*, 1982).

8.2 Revisional jurisdiction when cannot be invoked

The Court of Revision is not authorized to intervene in the findings of subordinate courts regarding matters of fact and law, even if there is a significant disagreement, unless the subordinate courts have violated the legal provisions or made procedural errors that may have impacted the final decision (*Safiuddin Malik Vs. The Govt. of West Pakistan*, 1969). Unless a very definite and explicit ground of law is made out in respect of an occasion of failure of justice following from the wrong decision, no interference is called for (*Mahmud Ali Vs. Sree Radha Krishna Begraha*, 1999). The dispute as to the question of fact cannot be resolved in revisional jurisdiction

under section 115 of the Code unless there is a case of misreading or failure to consider relevant evidence on record causing failure of justice (Jamaluddin and others Vs. Rowshan Ara Begum and others, 1997). A tenant's default status cannot be determined in a revisional proceeding unless there was a legal error that resulted in the findings being rendered unfair (Alauddin Chowdhury (Md) Vs. Ghulam Mohiuddin, 1997). When the trial Court and the lower appellate Court both found the property's auction purchasing to be fraudulent on the basis of a reliable evaluation of the evidence at hand, these findings cannot be overturned in a revisional proceeding (Ansar Ali Vs. Subhas Chandra Roy Shil, 1998). The trial judge's decision not to ask for a further report from the handwriting expert was made in a case that did not fall under section 115, hence the court cannot review that decision under its revisional authority (Umar Dad Khan Vs. Tila Md Khan, 1970). Conclusion drawn by subordinate court on facts based on belief or disbelief of witness evidence relates to appreciation of evidence not open to interference by the revisional Court (Kutubuddin Ahmed Vs. EPIDC Corporation, 1975). Where the subordinate Court had authority to decide a question which it did decide, it committed no illegality or material irregularity even if it decided the question wrongly (Saidar Mohd. Sadiq Khan Vs. K. B. Abdul Hye, 1958).

9. Revisional jurisdiction and its exercise discretionary

Revisional jurisdiction is only exercised at the court's discretion; no party may assert it as a matter of right. Jurisdiction of the revisional Court while hearing a revision petition is purely discretionary and that discretion is to be exercised only when there is an error of law resulting in an error in the decision and by that error a failure of justice has been occasioned and interference is called for the end of justice and not otherwise (RAJUK & Ors. Vs. H. Rahman & Ors., 2004). Revisional jurisdiction is discretionary and can be invoked in the interest of justice alone but it will not be exercised even though the lower Court acted without jurisdiction if there by it has rendered substantial justice (Sri Nibash Mukhopadhyay vs. Elahi Haider, 1958).

The purpose of the Court's revisional authority under Section 115 is to correct legal errors committed by lower courts using their jurisdiction, not their discretion, unless that discretion is applied capriciously or arbitrarily (Shahazada Mohd. Umar Beg. Vs. Sultan Mahmood Khan, 1970). When discretion is exercised by a subordinate court for the purposes of ensuring justice, the Court of revision could not interfere under its revisional authority (Abdul Kader Mondal and others Vs. Shamsur Rahman Chowdhury, 1999). But the discretionary power cannot be exercised for helping the litigant who is not vigilant to re-examine witnesses after 2.5 years (Nurul Islam Vs. Md. Abdur Rashid and others, 1986). The petitioner was the plaintiff in a suit for specific performance of a contract, and he applied for an Advocate Commissioner to investigate the suit land since it had not been partitioned by metes and bounds but the application was denied by the impugned order. In view of such circumstances the trial Court has not exercised his discretion judiciously and accordingly, the rule is made obsolete (Habibullah Chowdhury Vs. Md. Ibrahim and others 2005). Suit for permanent injunction under section-54 of the S.R Act, 1877 the Court revision in exercising its revisional jurisdiction found that the defendant could not prove their prima facie title and exclusive possession in the disputed land, the documents filed by the opposite parties are not forged and also they have proved the existence of a boundary wall on all sides of the disputed land which did not in any way discard their exclusive possession, therefore, the petition is dismissed (Md. Abdus Zaher & Ors. Vs. Abdul Jabbar & Ors., 2005). In exercise of such powers the High Court Division or the District Judge Court, as the case may be, is not obliged to hear parties in disposing of the Rule arising out of a revisional application and a judgment can be pronounced in the absence of parties when they have opportunity to appear but fail to appear (A Gani and others Vs. Abdul Jabbar Kha and others, 2003).

10. Conclusion:

The principles governing the exercise of revisional jurisdiction are well established and generally it is to be invoked by the person seeking the assistance from the Court. After the passing of the decree or the final order, the Court becomes *functus officio* except to review its own order to correct clerical errors in accordance with law. Where there is an imminent threat of mischief or danger and there is no readily available statutory remedy, the court may exercise its extraordinary jurisdiction to meet the interests of justice. The provision relating to revision, therefore, undoubtedly creates a very wide power to interfere with an order made by the lower Court; however, it clearly implies that the Court of revision shall have to exercise that power strictly to meet the extraordinary situation in order to meet the ends of justice; that is, apply its judicial mind to the records of the case after giving proper notice to the parties who may be affected by its order made under the said provision.

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