



3. The learned V-Senior Civil Judge, East Karachi after hearing the learned counsel for the parties, dismissed application under Order VII Rule 11 of the CPC by order dated **19.5.2018**. The applicant/ defendant has preferred this Revision Application against the said order.

4. Learned counsel for the applicant was required to overcome the objection raised by the office that how this Revision Application against the order of Senior Civil Judge is maintainable before this Court when remedy against the said order for him is to approach the District Judge. Learned counsel has vehemently contended that after the amendment in the Civil Procedure Code in 1994, it is an option available with the aggrieved party to file Civil Revision before High Court or before the District and Sessions Judge in terms of **Sub-section (1) and (3) of Section 115** of the **CPC**. He contended that this being a case of concurrent jurisdiction this Court can also entertain this Revision Application. However, he seems to avoid reading **Sub-section 2** of Section 115 of the CPC and particularly last part of it. Therefore, for convenience, complete **Section 115** of the **CPC** is reproduced below:-

**115. Revision.** (1) *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and a in which no appeal lies thereto, and if such subordinate Court appears.*

- (a) *to have exercised a jurisdiction not vested in it by law, or*
- (b) *to have failed to exercise a jurisdiction so vested, or*
- (c) *to have acted in the exercise of its jurisdiction illegally or with material irregularity,*

*the High Court may make such order in the case as it thinks fit.*

**Provided** *that where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the*

subordinate Court and the **High Court shall**, except for reasons to be recorded, **dispose of such application without calling for the record of the subordinate Court.**

**Provided further** that such application shall be made within 90 days of the decision of subordinate Court which shall provide copy of such decision within three days thereof and High Court shall dispose such application within six months.

(2) The District Court may exercise the powers conferred on the High Court by subsection (1) in respect of any case decided by a Court subordinate to such District Court in which no appeal lies **and the amount or value of the subject-matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.**

(3) If any application under subsection (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceeding in revision shall be entertained by the High Court against an order made under subsection (2) by the District Court.

5. A bare reading of the above provision clearly stipulates that power of High Court in respect of the cases decided by any Court subordinate to such High Court in which no appeal lies is not subject to any limitation but in case of District Courts exercise of such power is dependent on the otherwise pecuniary jurisdiction of the District Judge in terms of second part of sub-section (2) that is “**and the amount or value of the subject matter whereof does not exceeded the limits of the appellate jurisdiction of the District Court.**” Beside this distinction, **Sub-section (1)** of Section 115 of the CPC has two provisos in which exercise of power of Revision even by High Court has two clear restrictions when such power is exercised on an application filed by “a person” and it is not exercised by the Court itself. In my humble view Revisional power of Court is unfettered when it is exercised by the High Court and/or District

Court suo moto. But when it is invoked by an aggrieved party, it is to be exercised by the Courts without ignoring/offending the restrictions imposed by the legislature on the applicant in so many words in the section itself. The **first** restriction for the applicant is that he shall furnish copies of all the pleadings etc and the **second** restriction is 90 days limitation of time to approach the Revisional Court from the date of order in which no appeal lies. Both the proviso to **sub-section (1)** when read with last part of **Sub-section (2)** conferring power of Revision on District Court we find **third** restriction on “a person” who makes such application and it is about pecuniary value of the subject matter before the subordinate Court. It means the Revisional powers of High Court and District Court are concurrent only when it is exercised by them at their own to “call for the record of any case which has been decided by any Court subordinate” to such High/District Court. But this liberty is not available to “a person” when he/she invokes revisional jurisdiction of Court under **first** proviso to **Section 115(1)** of the **CPC**. The instant Revision is not under **sub-section (1)** of Section 115 of the CPC. It has been filed by an aggrieved “person” by virtue of **first** proviso to **sub-section (1)** and, therefore, the applicant for invoking the jurisdiction of High Court under **Section 115** of the **CPC** against the orders passed by the Court subordinate to the District Court is required to show that:

1. he has filed complete record of pleadings and order etc of subordinate Court;
2. the Revision is within (90) ninety days; and
3. the amount or value of the subject matter exceeds the limit of the appellate jurisdiction of the District Court.

In the case in hand the plaintiff/ Respondent has filed a suit for specific performance of the contract of obligation and recovery of

remaining amount as well as damages valued at Rs.78,70,000/-. The pecuniary value of his claim does not exceed the limits of appellate jurisdiction of the District and Sessions Judge. The legal position admittedly is that in case the suit is dismissed or decreed by the trial Court on merit, the first appeal would lie before the District and Sessions Judge on account of the pecuniary value of the decretal amount. Therefore, the contention of the applicant that the applicant has the OPTION to file a Revision before the High Court or the District Court is misconceived. There is a difference between the authority exercised by the Court itself and the authority of Court invoked by an aggrieved party to exercise such authority. Therefore, in my humble view when Revisional jurisdiction of Courts is invoked by an aggrieved person against a particular order it would not be a case of concurrent jurisdiction but it would be a case of approaching the Court for redressal of a grievance for which the aggrieved person is required to check the jurisdiction of Court for his grievance in terms of mandatory provision of **Section 6** read with **Section 15 to 20** of the **CPC** and not in terms of **Sub-section (3)** of **Section 115** of the **CPC** alone. The aggrieved party has no option in the matter of jurisdiction of Court, he/she has to respect each and every word of the statute and abide by the law with respect to the jurisdiction, be it territorial or pecuniary. By adding the condition of pecuniary value of the subject matter in **sub-section (2)** for the District Judge as a condition precedent for exercising power under **sub-section (1)** of **Section 115** of the **CPC**, the legislature has reminded the aggrieved party to follow **Section 6** and **Section 15** of the **CPC**. Both these sections are reproduced as follows:-

6. ***Pecuniary Jurisdiction.*** *Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court*

*jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.*

15. **Court in which suits to be instituted.** *Every suit shall be instituted in the Court of the lowest grade competent to try it.*

6. It goes without saying that an Appeal/Revision is continuation of original suit. In **Section 15** of the **CPC** it is mandatory that every suit **shall** be instituted in the Court of lowest grade and the applicant himself following this principle has filed his suit in the Court of lowest grade because of pecuniary value of his suit, then on being aggrieved by an order passed by the said Court, the provision of **Section 6** and **15** of the **CPC** should again be complied by him at the time of filing Revision/Appeal. Unless the pecuniary value of the subject matter exceeds the appellate jurisdiction of the District and Sessions Court it cannot be filed in the High Court without offending the mandatory **Section 6** and **15** of the **CPC**. Therefore, even if the revisional jurisdiction of High Court and District Court is concurrent, it is subject to the provisions of **Section 6** and **15** to **20** of the **CPC**. If every Revision is accepted by the High Court at the request of an aggrieved party by ignoring the pecuniary value of the subject matter, then why not even civil suit be entertained by the High Court by overlooking the pecuniary value of the suit since the High Court and the District Court in Karachi have concurrent territorial jurisdiction to entertain civil suit except on account of the value of the subject matter. The authority to invoke power of revisional Court cannot be conferred on the litigants. The litigants' hands are tied with **Section 6** and **15** of the **CPC** and the two proviso to **sub-section (1)** read with second part of **sub-section (2)** of Section 115 of the CPC.

7. Learned counsel for the applicant has relied on two judgments reported as *Muhammad Din vs. Muhammad Amin* (**PLD 1995 Lahore 15**) and *Mst. Safia Mushtaq vs. Wali Muhammad and 18 others* (**2010 CLC 120**). In both the citations relied upon by the learned counsel the power of revision exercised by the High Court was found lawful and Revision was held to be maintainable before the High Court as the High Court otherwise has the jurisdiction to call for record of any case decided by any Court subordinate to High Court and obviously the courts subordinate to District Court are also subordinate to the High Court. But it is **not** held in any of the two judgments that filing of a Revision application before the High Court or District Court is optional for the “**person**” who makes such application. The sole purpose of adding **subsection (2)** to Section 115 of the CPC was to curtail the burden of High Court to entertain Revision applications by “any person” against an order passed by a Court sub-ordinate to even District Court in which appeal does not lie. There are other citations in which a contrary view has been taken by this Court on the principle embodied in **Section 15** of the **CPC**. In this context one may refer to the cases reported as *Khalil Ahmed and another vs. Syed Hassan Shah Bukhari and others* (**1994 MLD 903**), *HOECHST Pakistan Limited and others vs. Maqbool Ahmed and another* (**1998 CLC 134**) and *Shafi-ur-Rehman and 2 others vs. Fateh Muhammad* (**PLD 2002 Karachi 511**). In my humble view the High Court in the two exceptions, one in **1995** and the other in **2010**, by entertaining Revision application filed by the aggrieved party has shown a grace while dismissing both the Revisions applications. In **1995** and even **2010**, I believe, the High Court was in a position to show grace in one or two cases. In those days, unlike 2019, the High Court was not flooded with the frivolous cases of harassment petitions and other

petitions challenging order of Magistrate on police report under **Section 173** of the **Cr.P.C** and even against the orders of Justice of Peace under **Section 22-A** of the **Cr.P.C**. In 2019 the word “grace” is confined to the dictionaries. Be that as it may, the provision of **subsection (3)** of **Section 115** of the **CPC** cannot be interpreted as an option for the aggrieved party to challenge an order against which appeal does not lie either in High Court or District Court. The Courts are not supposed to accept an interpretation of one Section of an Act which may render the other mandatory provision of the said Act meaningless, ineffective.

8. In view of the above factual and legal position, the applicant should have filed Revision Application before the District and Sessions Court. But he has deliberately and willfully chosen to file this Revision Application before this Court. I had categorically told him in the beginning that it is not maintainable before High Court but he insisted that in view of the judgment of this High Court in the case of Mst. Safia Mushtaq (*supra*) I should hear him at length and decide it on merit. Since my offer on first hearing was declined by the learned counsel, therefore, the time consumed herein shall not be considered as having been inadvertently consumed before a wrong forum. In principle when a case is filed in a Court which lacks jurisdiction on pecuniary ground, then generally the Complaint/Revision has to be returned to the party to file it in the Court having both territorial and pecuniary jurisdiction within limitation prescribed for filing the case. But in the case in hand time for returning the memo of Revision application has expired because the applicant has consumed more than 90 days time to overcome the objection raised by the office on **16.08.2018**. This Revision itself was filed on 84<sup>th</sup> day

from the date of impugned order i.e **19.5.2018**. Therefore, this Revision is dismissed since after expiry of 90 days it cannot be presented in the Court of District and Sessions Judge. The trial Court is already seized of **suit No.2009/2017** should expedite the proceedings and decide it on merit within six months of receiving the copy of this judgment and submit progress report after every two months to this Court through MIT-II for perusal in Chamber.

JUDGE

Karachi  
Dated:05.04.2019

Ayaz Gul