

Order-46 Reference

CONTENTS

1. Reference of question to High Court
2. Court may pass decree contingent upon decision of High Court
3. Judgment of High Court to be transmitted, and case disposed of accordingly
4. Cost of reference to High Court
- 4A. Reference to the High Court under proviso to Sec. 113
5. Power to alter, etc. decree of Court making reference
6. Power to refer to High Court questions as jurisdiction in small causes
7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes
8. Applicability of rule 38 of Order XLI

Order-46 Reference

Order-46 Reference

1. 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 his own motion or on the application of any of 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 or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of High Court upon the reference.

3. Judgment 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 judgment, 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. Cost of reference to High Court :-

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

4A. Reference to the High Court under proviso to Sec. 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 1¹ [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.

1. Ins. by Act 24 of 195] Sec. 2

6. Power to refer to High Court questions as 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 proceedings 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 circumstances 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.

High Court Amendment Bombay.-After rule 7 of Order XLVI a new rule 8 shall be inserted as under:

8. Applicability of rule 38 of Order XLI :-

". - Rule 38 of Order XLI shall apply, so far as may be, to proceedings under this Order." ¹

1. Vide Notifn. No. P. 0102/77 (w.e.f. 1st October, 1983).