

## Modi Spinning and Weaving Mills Co. and Another Vs Ladha Ram and Co.

**Court:** Allahabad High Court

**Date of Decision:** April 3, 1978

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 14 Rule 1, Order 14 Rule 2, Order 14 Rule 3, Order 14 Rule 5, Order 26 Rule 9

**Citation:** (1978) AWC 302

**Hon'ble Judges:** S.D. Agarwala, J

**Bench:** Single Bench

**Advocate:** Banarsi Dass, for the Appellant; Shanti Swarup Bhatnagar, for the Respondent

**Final Decision:** Dismissed

### Judgement

S.D. Agarwala, J.

This is a revision filed u/s 115 of the CPC against an order rejecting an application made by the applicant for framing additional issues in the case. The facts giving rise to the present revision are as follows:

(His Lordship then discussed the facts of the case and proceeded on to observe-Ed.)

2. Learned Counsel for the Plaintiff Respondent has taken a preliminary objection to the effect that an order passed by the trial court in exercise of

its jurisdiction under Order XIV, Rule 5 of the CPC rejecting an application for framing additional issues is not a case decided within the meaning

of Section 115 CPC and as such the revision filed in this Court is not maintainable in law.

3. The relevant portion of Section 115 CPC is to the following effect:

\* \* \*

In view of the above provision the revision would lie only if the impugned order would come within the expression "any case which has been

decided."

4. In Major S.S. Khanna v. Brig. F.J. Dillon AIR 1964 SC 497 the Supreme Court had occasion to interpret the word "case". In the above case

the Supreme Court held that the expression "case" could not mean only entire proceedings but would also bring within its ambit a part of the

proceedings. It held as follows:

The expression "case" is a word of comprehensive import: it includes...perpetration of gross injustice.

5. The Supreme Court in the above case further took the view that since the expression "case" includes a part of the case the revisional jurisdiction

of the High Court may also be exercised irrespective of the question whether an appeal lies from the ultimate order or decree passed in the suit.

6. The question as to what is a case decided came up for consideration before the Supreme Court in *Baldevdas Shivilal and Another Vs. Filmistan*

*Distributors (India) P. Ltd. and Others*, . Justice J.C. Shah, as he then was, delivering the judgment of the court opined:

A case may be said to be decided, if the court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every

order in the suit cannot be regarded as a "case decided" within the meaning of Section 115.

7. In *Madhu Limaye v. State of Maharashtra* 1978 AWC 96 Untwalia, J. observed as follows:

Many a time a question arose in India as to what is the exact meaning of the phrase "case decided" occurring in Section 115 of the Code of Civil

Procedure.... But if the point is decided against him the suit proceeds.

8. In view of the principle laid down above it is clear that every interlocutory order passed by the trial court during the progress of the suit cannot

be held to be a case decided within the meaning of Section 115 of the Code of Civil Procedure. The case can be said to be decided only if for the

purpose of the suit some right or obligation of the parties have been decided by the said order. In case every interlocutory order is held to be a

case decided this will defeat the very purpose for which the Legislature enacted Section 115 CPC because that will give a handle to a party in a

suit to obstruct the progress of the suit by approaching this Court u/s 115 CPC against every order which has been passed by the trial court in the

said suit.

9. Order 14 of the CPC lays down rules for the settlement of issues and determination of suits on issues of law or on issues agreed upon. Under

Rule 1 issues arise when a material proposition of fact of law is affirmed by the one party and denied by the other. Rule 2 gives a discretion to the

court to decide a particular issue as a preliminary issue. Rule 3 gives a discretion to the court to frame issues on the basis of the allegations made

on oath by the parties or by the persons present on their behalf or made by the pleaders of such parties, the allegations made in the plaint or in

answer to interrogatories delivered in the suit and on the basis of the contents of documents produced by either party. Rule 4 gives power to the

court to examine witnesses or documents before framing issues. By Rule 5 power is conferred on the court to amend the strike out issues. Further

power is given under Rule 5 to frame additional issues on such terms as it thinks fit or as may be necessary for determining the matter in

controversy between the parties. The power to frame additional issues is a discretionary power of the trial court. Additional issues may be framed

if the court thinks necessary for determining the matter in controversy. By an order refusing to frame additional issues or allowing an application for

framing of additional issues no right or obligation of the parties in controversy is adjudicated upon by the Court. It is a matter only of procedure.

The Court, after examining the pleadings and other material on record as required under Rule 3, may frame the issues. Since no right or obligation

of a party is determined by an order refusing to frame additional issues such an order cannot be held to be deciding a case between the parties and

in my opinion it would not come within the ambit of the expression "case which has been decided". Similar would be the position in regard to an

order by which additional issues are framed or amended.

10. Learned Counsel for the applicant has, however, relied upon two decisions. The first decision relied upon is *Manindra v. Paresh* AIR 1971

Gau 127 and the second decision relied upon is *Sadhu Ram v. Ghanshyam Dass* AIR 1975 P & H 174. Both these cases are distinguishable. In

none of the cases the question as to whether the refusal by a trial court to frame additional issues was in question. In the *Assam* case the court was

interpreting an order refusing to allow the prayer of the Plaintiff for issue of a commission to make local inspection under Order XXVI, Rule 9

Code of Civil Procedure. The *Punjab* case dealt with a question as to whether refusal by the trial court to change the onus of an issue amounted to

a case decided. The *Punjab* High Court was of the view that the change of onus has resulted in adjudicating the rights of the parties in controversy.

The principle laid down in those cases do not apply in the present case.

11. In view of the above discussion I am of the opinion that the preliminary objection raised by the counsel for the Plaintiff opposite party has

substance and as such the revision is not maintainable.

12. In any case even assuming that the impugned order is revisable in my opinion it is not a fit case for interference as it will not occasion a denial of

justice. The only aim of the applicants in making this application for the framing of additional issues is to delay the disposal of the suit. The suit was

filed as far back as 1971. Seven years have already elapsed. When the issues were framed by the trial court on the basis of the written statement

which was filed by the Defendant applicant no other issues was pressed. It is simply because of an observation made by the Supreme Court which

was not in the nature of a direction that the Defendant applicant again started a second innings by applying against for the framing of additional

issues on pleas which were rejected by the Supreme Court. The trial court has categorically found that so far as issues Nos. 1 to 4 were

concerned they did not arise because the Plaintiff Respondent had stated that he does not rely upon the agreement dated 7th April 1967. In regard

to issue No. 5 the Plaintiff Respondent has given up the claim. In the circumstances issues do not arise at all. Section 107 of the CPC clearly

provides that in an appeal filed against a decree the appellate court has power to frame issues and to remit them for trial.

13. I have also examined the issues already framed. Issue No. 10 is to the following effect:

Whether there was any agreement between the parties under which the Plaintiff had waived his right to claim the balance of bales unsupplied and

also not to claim any damages on that account? If so, its effect?

14. This issue would enable the Defendant applicant to argue on the basis of the pleadings stated in paragraphs 25 and 26 of the written statement.

Counsel for the Respondent has conceded that the pleas so raised in paragraphs 25 and 26 can be raised within the ambit of this issue. In the

circumstances it is not necessary to frame any additional issue.

15. For the reasons mentioned above the applicant is not at all affected by the fact that the trial court has refused to exercise its jurisdiction in

framing additional issue.

16. In the result the revision has no force and is dismissed with costs.