Their Lordships will humbly advise His Majesty that the appeal shall be disallowed.

A. M. T.

Appeal disallowed.

Solicitors for appellants: *Francis & Harker.*

FULL BENCH.

Before Sir Shadi Lal, Chief Justice, Mr. Justice LeRossignol, Mr. Justice Broadway, Mr. Justice Abdul Raoof and Mr. Justice Martineau.

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Feb. 25.

LAL CHAND-MANGAL SEN (DEFENDANTS) Petitioners,

versus

BEHARI LAL-MEHR CHAND (PLAINTIFFS) Respondents.

Civil Revision No. 344 of 1921.

Punjab Courts Act, VI of 1918, section 44 (corresponding to section 115 of the Code of Civil Procedure, Act V of 1908)—High Court's power to revise an interlocutory order from which no appeal is competent.

The Munsif of Batala overruled the defendants' objection and decided that he had jurisdiction to hear the suit. The defendants applied to the High Court for revision of the order.

Held, that the High Court has no jurisdiction to entertain the application for revision. An interlocutory order does not constitute a " case " within the meaning of section 44 of the Punjab Courts Act (corresponding to section 115 of the Code of Civil Procedure).

Pandit *Rama Kant* v. Pandit *Ragdeo* (1), overruled.

Makhan Lal-Parsottam Das v. *Chuni Lal-Birj Lal* (2), *Bhargava and Co.* v. *Jagannath Bhagwan Das* (3), and *Buddhu Lal* v. *Mewa Ram* (4), referred to.

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(1) 60 P. R. 1897 (F. B.).
(2) (1918) 16 All. L. J. 777
(3) (1919) I. L. R. 41 All. 602.
(4) (1921) I. L. R. 43 All. 564 (F. B.).

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AMAR NATH *Chona* (with *Sagar Chand*) for the Petitioners—Section 44 of the Punjab Courts Act corresponds to section 115 of the Civil Procedure Code, which has taken the place of section 622 of the old Code of 1882. Though the wording of section 115 of the new Code is different from that of section 622 of the old Code there is no material alteration in the law. The rulings dealing with the meaning of the word " case " under section 622 of the old Code are therefore still good law. In *Pandit Rama Kant* v. *Pandit Ragdeo* (1), it was held that the word " case " does not necessarily mean the *whole* case, but may mean a particular branch of a case, and may include an interlocutory order. The word " case " has not been correctly interpreted by the Allahabad High Court in *Buddhu Lal* v. *Mewa Ram* (2). " Case " is a word of wide and comprehensive import, and clearly covers a far larger area than would be covered by the word " suit." As section 115 of the present Code is merely an empowering section granting certain jurisdiction to the High Court, the section ought to receive a liberal rather than a narrow interpretation. The view of the majority in the Full Bench case *Budhu Lal* v. *Mewa Ram* (2), is against the trend of authority. All the High Courts have interfered in a case like the present. The earliest Calcutta ruling in *Dhapi* v. *Ram Pershad* (3), in which all the previous authorities on the point are discussed lays down the same view as the latest Calcutta ruling in *Sivaprasad Ram* v. *Tricomdas Coverji Bhoja* (4)—See also *Kshirode Chunder* v. *Saroda Prasad* (5), and *Udoy Chand* v. *Reasat Hossein* (6). The Patna High Court rulings are to the same effect—See *Rameshwar Narayan Singh* v. *Rikhanath Keori* (7), which follows *Dhapi* v. *Ram Parshad* (3).

(1) 60 P. R. 1897 (F. B.).
(2) (1921) I. L. R. 43 All. 564 (F. B.)
(3) (1887) I. L. R. 14 Cal. 768, 778, 781.
(4) (1915) I. L. R. 42 Cal. 926.
(5) (1910) 12 Cal. L. J. 525.
(6) (1922) 70 I. C. 484.
(7) (1920) 58 I. C. 281.

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See also *Sheo Prasad Singh* v. *Shukhu Mahto* (1). The Madras view is contained in *Arunachellam* v. *Arunachellam* (2), *Velappa Nadar* v. *Chidambara Nadar* (3), *Jagannath Sastry* v. *Sarathambal Ammal* (4). The Madras High Court has refused to follow the majority view in *Buddhu Lal* v. *Mewa Ram* (5). The Bombay High Court has given a wide interpretation to the word " case " in *Bai Atrani* v. *Deepsing Baria* (6). The Burma Chief Court follows *Dhapi* v. *Ram Parshad* (7), in *Chetty* v. *Narayan Chetty* (8). The Lahore High Court has been in favour of interfering where it appears to it that there is a risk of irreparable injury and irremediable loss in case of non-interference—See *Damri Shah-Thakar Ram* v. *Rulia Mal-Dogar Mal* (9), *Durga Parshad-Mutsaddi Lal* v. *Rulia Mal-Dogar Mal* (10), *Ram Lal* v. *Ganeshi* (11) *Sawan Singh* v. *Rahman* (12), *Har Parshad-Dalip Singh* v. *Sewa Ram-Jado Ram* (13), *Imdad Ali Shah* v. *Sayed Ali* (14), *Gauri Shankar* v. *Ganga Ram* (15), and *Gurdas* v. *Bhag* (16). The objection as to jurisdiction would be fruitless subsequently and could not be taken —See *Ratti Ram* v. *Kundan Lal* (17). The Allahabad High Court has not been consistent. Rulings to the contrary are cited in *Buddhu Lal* v. *Mewa Ram* (5), the Full Bench decision which has necessitated the present reference to your Lordships.

MEHR CHAND *Mahajan*, for the Respondents—The word " case " has been used in several places in

(1) (1923) 72 I. C. 148.
(2) (1923) 43 Mad. L J. 218.
(3) (1922) 43 Mad. L. J. 277.
(4) (1922) 71 I. C. 530.
(5) (1921) I. L. R. 43 All. 564 (F. B.)
(6) (1915) I. L. R. 40 Bom. 86, 92.
(7) (1887) I. L. R. 14 Cal. 768, 778,
(8) (1920) 64 I. C. 821.
(9) (1920) 64 I. C. 387.
(10) (1921) 65 I. C. 282.
(11) (1920) 59 I. C. 685.
(12) (1920) 55 I. C. 739.
(13) (1920) 60 I. C. 481.
(14) 26 P. R. 1917.
(15) 77 P. R. 1199.
(16) 96 P. R. 1911.
(17) 87 P. R. 1914.

the Civil Procedure Code, and it is clear from a consideration of all those that "case" means the whole case. In Order XIV, rule 2, the word "case" has been distinguished from "part of a case." Order XX, rule 1, Order XXXVI, rules 1 and 5, sections 107 and 99 of the Code make it clear that the word "case" means the *whole* case. *Buddhu Lal* v. *Mewa Ram* (1), contains a correct exposition of law. The earliest ruling of the Punjab Court is *Gunda Mal* v. *Shibji Ram* (2), and that is in my favour. There has been a good deal of conflict of authority in the Calcutta High Court, but the latest decisions show that the word "case" has been taken to mean the whole case, *Gobinda Mohan Das* v. *Kunj Behary Das* (3), and *Bansi Singh* v. *Kishun Lall* (4). The High Court of Bombay has also taken the same view in *Bai Rami* v. *Jaga Dullabh* (5).

Amar Nath *Chona*, replied.

Application for revision of the order of Lala *Gokal Chand, Mehta, Munsif, 1st Class, Batala, District Gurdaspur, dated the 2nd August 1921, holding that he had jurisdiction to hear the suit.*

SIR SHADI LAL C. J.

Sir SHADI LAL, C. J.—The question of law submitted to the Full Bench is whether an interlocutory order, from which no appeal lies, can be revised by the High Court under section 44 of the Punjab Courts Act, which corresponds to section 115 of the Civil Procedure Code. The section, so far as is material to the issue before us, is in the following terms :—

> "The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, ..."

(1) (1921) I. L. R. 43 All. 564 (F. B.).
(2) 114 P. R. 1883.
(3) (1909) 14 Cal. W. N. 147.
(4) (1913) I. L. R. 41 Cal. 632.
(5) (1919) I. L. R. 44 Bom. 619.

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SIR SHADI LAL C. J.

It is incontrovertible that the revisional jurisdiction of the High Court cannot be invoked unless a case has been decided by a subordinate Court, and the point which requires determination is whether an interlocutory order can constitute a "case" within the meaning of the section. The judgments of the High Courts in India, which have been cited at the Bar, reveal a great divergence of judicial opinion, and there can be little doubt that the decisions of the Judges in several cases were influenced by their desire to avoid the possibility of grave injustice which might result from placing a strict interpretation upon the word "case" as used by the Legislature. Neither the Civil Procedure Code nor the General Clauses Act defines the expression "case," and there is no other Statute which can throw any light upon the subject. It is beyond question that "case" is not synonymous with "suit." While every suit is a case, it cannot be said that every case is a suit. The word "case" is a more comprehensive expression and includes not only a suit but other proceedings which cannot be described as a suit, *e.g.*, proceedings under the Guardians and Wards Act, Probate and Administration Act, Succession Certificate Act, Provincial Insolvency Act, Religious Endowments Act, etc. But can a branch of a suit be regarded as a case within the meaning of the section? I would answer the question in the negative. The scheme of the Code shows that, while certain orders to which importance was attached by the Legislature are made appealable (these orders are enumerated in section 104 and Order XLIII, rule 1, of the Code), other orders not included in that list can be interfered with by a superior Court only on an appeal from a decree provided that they affect the decision of the case, *vide*, section 105, Civil Procedure Code. It seems to me that the Legislature did not contemplate that an

order made by a Court before the final judgment, from which no appeal is allowed, should be challenged on an application for revision, and that the trial of the suit should be delayed pending the disposal of that application.

It is not difficult to cite instances in which grave injustice might result from an incorrect decision of a subordinate Court unless the mistake is rectified at once by a superior Court; and no such rectification is possible if the order in question does not belong to the category of appealable orders and is also excluded from the cognizance of the High Court in the exercise of its revisional jurisdiction. I recognize that some cases of hardship are bound to arise and that it would be desirable to provide a remedy for correcting errors which may otherwise cause an irreparable injury. But hardship, however, grave, should not influence our interpretation of the Statute ; and we must leave it to the Legislature to amend the section or to the High Court to add to the list of the orders enumerated in Order XLIII, rule 1, such other orders as may be considered to be sufficiently important to form the subject of an appeal before the final judgment.

The learned Vakils on both sides have invited our attention to numerous decisions in support of their respective contentions, but it would serve no useful purpose to recite them here. It is common ground that the judicial authorities are by no means agreed as to the meaning of the word " case," and that the various High Courts have expressed divergent views as to the scope of their revisional jurisdiction. There is, however, a judgment by a Full Bench of the Punjab Chief Court, reported as *Pandit Rama Kant* v. *Pandit Pagdeo* (1), to which I must make a brief reference. That judgment is certainly an authority for the proposition

(1) 60 P. R. 1897 (F. B.)

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that the word " case " " *does not necessarily*, in every instance mean the *whole* case, but may mean a particular branch of a case for which an independent remedy or a different procedure is provided in the Code, and may include an interlocutory order." I have, however, sought in vain for any reason in support of the view that a " case " may mean a particular branch of a case, except that the contrary view would sometimes lead to injustice and that " that interpretation should be accepted which is most consonant to reason and justice and most subservient to the purposes for which the section was framed." With all due deference to the learned Judges I am unable to concur in their interpretation of the section. A beneficial construction may no doubt be adopted when the language is capable of more than one meaning, but I am not prepared to concede that the word used by the Legislature can reasonably bear the meaning assigned to it by the learned Judges. Nor do I think that any clear and definite line can be drawn to separate a branch of a suit which may be regarded as a " case " from another branch which is not a " case " within the meaning of the section.

I have given the matter my careful consideration and reached the conclusion that the High Court has no jurisdiction to entertain an application for the revision of an interlocutory order.

LEROSSIGNOL J.

LEROSSIGNOL J.—The question submitted to this Bench may be narrowed down to the question whether the word " case " in section 44 of the Punjab Courts Act and section 115 of the Civil Procedure Code may be interpreted to mean ' branch of a case.'

My answer is unhesitatingly in the negative.

The scheme of the Code is to provide an appeal from decrees and from certain specified orders, and to

allow revision in *decided* cases, which may not be challenged by appeal. It is not a part of the scheme to allow the revision of non-appealable orders passed in an undecided case.

Had any other course been adopted, the lamentable delay now witnessed in the disposal of suits and cases would be still more pronounced.

It has been urged at the Bar that hardship will result in some cases if irregular and erroneous orders are not set right without delay, but the reply is that human ingenuity can devise hardly any law which will not operate harshly at times.

'Hard cases make bad law' and it appears to me, that in most of the cases cited for the petitioner the Judges have interfered in oblivion of this maxim, certain it is that they have given no logical justification of their intervention.

De rāris non curat lex and my own experience leads me to the conclusion that far more hardship would result and has resulted from the interference of superior Courts during the pendency of a suit than would have been caused had the superior Court stayed its hand till the suit had been finally decided.

My conclusion then is that the interference of a superior Court by way of revision in an undecided case is not justified by the Code and is generally inexpedient.

BROADWAY J.—Section 44 of the Punjab Courts Act, which corresponds to section 115 of the Code of Civil Procedure, gives this High Court certain revisional powers. BROADWAY J.

The question referred to this Bench is whether these revisional powers are wide enough to allow this Court to interfere in interlocutory orders passed by subordinate Courts. This question was never argued at any length before me till now and hitherto I have felt bound by the Full Bench decision of this Court reported

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as *Pandit Ram Kant* v. *Pandit Pagdeo* (1), but have held that though this Court had the power to interfere in such interlocutory orders it would exercise that power only in very exceptional cases where a refusal to interfere might occasion irreparable harm. After a careful consideration of the arguments, and the authorities cited at the Bar, I have no hesitation in agreeing to answer the question in the negative.

ABDUL RAOOF J.

ABDUL RAOOF J.—I am entirely of the same opinion as the learned Chief Justice. The answer to the question referred to the Full Bench depends upon the determination of the question whether the expression 'any case which has been decided' can be so interpreted as to include the decision of a part of a case.

In the case of *Makhan Lal-Parsottam Das* v. *Chuni Lal-Birj Lal* (2) a similar question under section 25 of the Provincial Small Cause Courts Act arose for decision before me sitting alone as a Judge of the Allahabad High Court, and I held that the decision of a case did not include the decision of an issue or part of a case. In the case of *Bhargava and Co.* v. *Jagannath Bhagwan Das* (3), Rafiq and Walsh JJ. took the opposite view. In consequence of a difference of opinion upon the point the question was referred to a Full Bench of five Judges—*Buddhu Lal* v. *Mewa Ram* (4). The majority of the Judges constituting the Full Bench, namely, Piggot, Ryves and Gokul Prasad JJ., agreed with my construction of section 115 of the Civil Procedure Code. Mr. Justice Piggot, after referring to the various provisions of the Code bearing upon the question under consideration, delivered an exhaustive and well considered judgment, and came to the conclusion that "the word 'case' is a more comprehensive expression

(1) 60 P. R. 1897 (F. B.).
(2) (1918) 16 All. L. J. 777.
(3) (1919) I. L. R. 41 All. 602.
(4) (1921) I. L. R. 43 All. 564 (F. B.).

than ' suit ' and includes suits as well as certain other proceedings, *e.g.*, those under the Guardians and Wards Act or under the Provincial Insolvency Act. Where the ' case ' in which the revisional jurisdiction of the High Court is invoked happens to be also a ' suit ', then this suit is itself the ' case ' referred to in section 115 which requires to be decided before the record can be called for; the record of a suit, therefore, should not be called for under section 115 until the suit has been decided. The fact that the Munsif elected to deal with the preliminary issue in a particular way and drew up a formal order did not make his finding on that issue a ' case decided ' within the meaning of section 115." Ryves and Gokul Prasad JJ. agreed.

ABDUL RAOOF J.

The learned Chief Justice has expressed his opinion in almost similar terms. The construction put by the learned Chief Justice upon the expression ' case decided ' is the only possible construction. I also answer in the negative the question referred to the Full Bench for decision.

MARTINEAU J.—I agree that the question referred to this Bench must be answered in the negative.

MARTINEAU J.

A. R.

Petition rejected.