

## Special Legal Issues Seminar

### *Choosing Between - A Review, Revision, Appeal, and Writ Petition - Against an Order passed in an IP Case*

## Relevant Statutory Provisions

- ❖ **Section 96: Appeal from original decree.**— *“(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, **an appeal shall lie from every decree passed by any Court exercising original jurisdiction** to the Court authorized to hear appeals from the decisions of such Court.*
  - (2) *An appeal may lie from an original decree passed ex parte.*
  - (3) *No appeal shall lie from a decree passed by the Court with the consent of parties...* [Emphasis supplied]
  
- ❖ **Section 114: Review.**— *“...any person considering himself aggrieved—*
  - a) ***by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.***
  - b) ***by a decree or order from which no appeal is allowed by this Code, or;***
  - c) ***by a decision on a reference from a Court of Small Causes,** may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.” [Emphasis supplied]*

## Relevant Statutory Provisions (Contd.)

- ❖ **Section 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 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...*(2) *The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto...* [Emphasis supplied]

*Explanation.—In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”*

- ❖ **Article 226: Power of High Courts to issue certain writs.**- “*Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose...”* [Emphasis supplied]

## Review Petitions

- ❖ **Meaning and Object:** Review means when the court re-examines the decisions made by itself. It rectifies the error in an act, judgment, or legislation. A review petition can be filed in the same court that passed the order/decreed only.
- ❖ Cases where review lies: (a) Non-appealable cases where no right to appeal is granted or where appeal is rejected; (b) Where appeal lies but is not preferred.

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### **Grounds for Review:**

**Discovery of New Evidence** – When of new evidence or matter which is substantial to the case and was not in the cognizance of the concerned person, then that person can successfully apply for review.

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**Error on Face of Record-** The prima facie error that looks pretty conspicuous without a legal analysis of the judgment can only be taken into account for review under this ground. The error or mistake could either be a mistake in law or a mistake in fact.

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**Other Sufficient Reasons-** In *Chajju Ram v. Neki* [(1922) 24 BOMLR 1238], it was held that the sufficient reason shall be connected with the other two reasons in the least possible way. The mere fact that the court ignored an important fact will not make a valid point under this ground.

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## Scope of Review Petitions

- ❖ *Shri Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat and Ors.* [SLP (Civil) No. 28150/2017, Supreme Court] -

**Held:** “From a bare reading of Section 114, it appears that the substantive power of review...has not laid down any condition as the condition precedent in exercise of power of review nor the said section has imposed any prohibition on the Court for exercising its power to review its decision. **However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1** ...An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the define limit mentioned in Order 47 Rule 1 CPC itself. **The powers of review cannot be exercised as an inherent power nor can an appellate power be exercised in the guise of power of review...**” [Emphasis supplied]

## Review in IP Cases: Relevant Case Law

❖ *Indian Performing Right Society v. Entertainment Network India*, [IA NO. 4937/2010 in CS(OS) 666/2006, Delhi High Court]

**Facts:** Plaintiff had filed a suit for permanent injunction to restrain the defendants from playing or broadcasting any programs which contain contents for which plaintiff has exclusive sound recording rights. Defendant originally was broadcasting Plaintiff's contents on 3 of its radio stations. When the Defendant was permitted to open more radio stations, the plaintiff sought to amend the plaint. The court rejected the amendment as it set out a subsequent cause of action, which, if permitted to be incorporated, would only enlarge the scope of the suit and further delay it. Plaintiff filed for review.

**Held:** “... The Court does not discern anything contrary to law or manifestly erroneous from the face of the record so as to compel it to exercise review jurisdiction. It is trite law that while exercising its powers under Section 114 read with Order 47 Rule 1 CPC, the Court's jurisdiction is narrow and confined. Re-appreciation of new points of arguments or questions of law are excluded from the scrutiny of the Court in valid exercise of review jurisdiction...” [Emphasis supplied]

## Revision

- ❖ The primary objective of a revisional authority of the High Court empowered by Section 115 is to ensure that no subordinate court acts arbitrarily, illegally, capriciously, irregularly or exceeds its jurisdiction.
- ❖ **Pre-Conditions:**
  - (a) The case must have already been decided and judgement declared by the subordinate court.
  - (b) There must not be any appeal lying against the case decided by the subordinate court. If an appeal is filed, revision can only be filed once the appeal is dismissed. The word “appeal” includes both the first appeal and second appeal. Therefore, the revision can only lie when the appeal is dismissed or does not lie.
  - (c) No alternative remedy available.

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### **Grounds for Revision:**

The subordinate court has exercised jurisdiction not vested in it by law.

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1. The subordinate court has failed to exercise jurisdiction vested in it by law.

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- The subordinate court exercises its jurisdiction illegally or with material irregularity or in breach of some provision of the law or by committing some errors of procedure in the course of the trial which may have affected the ultimate decision.

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## Revision in IP Cases: Relevant Case Law

### ❖ *Paramveer Singh Sachdeva vs Kohinoor Paints* [65 (1997) DLT 541]

**Facts:** Application for amendment of plaint was rejected by the trial court on the ground that it sought to set up a new case. Revision Petition was filed, *inter alia*, on the ground that by way of amendment, the petitioner only tried to explain in detail the facts. In fact the amendment was clarificatory in nature, and the petitioner wanted to add the name of predecessors in interest and title. Most of the facts which the petitioner now wanted to incorporate have already been mentioned in the replication and in reply to the counter claim filed by the petitioner. The amendment was sought to bring more explicitly those facts.

**Held:** “...The jurisdictional error can be inferred when this Court finds that the amendment has been wrongly rejected. In that eventuality it can be said that the Court below failed to exercise the jurisdiction vested in it by rejecting the amendment on flimsy grounds. This Court after considering the facts of this case came to the view that the amendment sought was only explanatory in nature which the Trial Court ought to have allowed. Since he failed to do so hence jurisdictional error. Part of these facts were already on record in the form of replication and written statement. Nothing new was going to be placed on record. Hence, the Trial Court committed error in rejecting the same. It is in these circumstances that the Court can not shut its eyes nor can refuse to exercise its right to interfere under Section 115 of CPC...” [Emphasis supplied]



## Appeals

- ❖ Sec. 96 of the CPC provides for availability of an appeal from “every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.”
- ❖ The right to appeal is a broad right that allows the applicant to raise various grounds against the findings of the order and to have their application reassessed.
- ❖ An appeal is asking a higher court to review and if needed, to reverse the decision of the lower court and to turn it in the losing party’s favor after the final judgment has been given.

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### Grounds for Appeal:

**When a mistake was committed in the trial**– Only grave errors are counted under this provision. Harmless errors cannot be a ground for appeal. The appellant must also show that the error caused his rights to be infringed.

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**When evidence does not support the verdict**– It is much harder to prove an appeal that is based on insufficient evidence. As the Court of Appeal did not hear the entire proceedings in the previous trial and didn’t make a fully unbiased decision. Based on their belief in the judgement of the trial court, most appeal courts weigh and then make their decision.

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## Appeal in IP Cases: Relevant Case Law

### ❖ *Agatha Christie Ltd. vs Registrar of Trade Marks* [C.A. (COMM.IPD-TM) 10/2021]

**Facts:** The Court was hearing an appeal filed by Agatha Christie Ltd. against the decision of Registrar of Trademarks. The Registrar had rejected the application for registration of ‘And Then There Were None’ stating that the mark lacks distinctiveness and has never really been used as a trademark.

**Held:** “...*The impugned order is also liable to be set aside, in my view, as being unreasoned. The right to register a mark under which one intends to provide goods or services is a valuable right, partaking of the character of Article 19(1)(g) of the Constitution of India...Any decision not to allow registration of a mark has, therefore, to be informed by reasons which should be apparent on the face of the decision. The impugned order, in my view, is bereft of sufficient reasons to justify the decision taken therein.” [Emphasis supplied]*

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## Differences between Review, Revision and Appeal

### Review

- Given by the same court which passed the decree or made the order
- Review can be done only after the passing of the order
- The decree granting a review is appealable.
- The grounds for review are the discovery of new evidence, error on the face of the record and any other sufficient reason

### Revision

- Revision is when a higher court looks into the matter closely, on which decision is given by a lower court, and make necessary corrections as to jurisdiction.
- Revision can be done only once.
- Revision can be of any decision passed by the subordinate court.
- A revision can be made on the grounds of jurisdictional error.

### Appeal

- An appeal is when the facts and evidence are re-argued or considered, to arrive at a different outcome or say decision.
- Multiple appeals are allowed.
- Appeals are against decrees and appealable orders.
- An appeal can be made on the grounds of the question of law and fact.

## Writs

- ❖ Articles 226 and 227 of the Indian Constitution elaborate on the powers of the High Courts. The writ jurisdiction is invoked for the **violation of fundamental rights and other legal rights** of citizens and non-citizens alike.
- ❖ Writs are issued by courts against public bodies and writ jurisdiction can be directly invoked against decisions of various IP registries such as the Patent Office, Trademarks Registry etc., when there is a violation of principles of natural justice or other principles enshrined in the Constitution.

### Relevant Case Laws

- ❖ ***Bharat Tea Suppliers v. Gujrat Tea Traders*** [Writ Petition No.9044 of 2021, Bombay High Court]

**Facts:** The petitioner invoked the powers of this Court under Article 226 and 227 of the Constitution of India for impugning the judgment and order passed by IPAB, Chennai on the grounds that their copyright application was rejected without granting an opportunity to be heard.

**Held:** “...even no prejudice can be said to have been caused to the petitioner in the absence of any opportunity of being heard having been extended to it in person. **The impugned order clearly demonstrates that its stand was duly considered by the IPAB and it has allowed the application of the respondent for the sole reason of noncompliance of Rule 16(3) about which factually there is no dispute.**” [Emphasis supplied]

## Writs: Relevant Case Laws (Contd.)

❖ *Sumitra Nandan Gupta v. Copyright Board* [ILR 1970 Delhi 531]

**Facts:** Revision petition filed against an order of the Copyright Board was dismissed ground that the proper remedy of petitioner was appeal under S. 72 of Copyright Act — writ petition about the same matter — not maintainable.

**Held:** “ ...a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the Subordinate Court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions... The petitioner cannot be allowed to by-pass the order of the Allahabad High Court by resort to these writ proceedings...In view of the dismissal of the revision petition by the Allahabad High Court, it would be inappropriate and not a sound exercise of discretion to deal with the matter in the writ petition...” [Emphasis supplied]

## Conclusion

- ❖ The decision between filing a review, revision, appeal and writ is solely dependent upon the facts and circumstances of each case. The surrounding circumstances would govern which remedy is best available to the aggrieved.
- ❖ Review not only protects the right but also the dignity of the individual and makes sure that there is no miscarriage of justice.
- ❖ Revisional jurisdiction is conferred on the High Court for the effective exercise of its supervisory and visitorial powers.
- ❖ An appeal is a plea for a second judgment on the same matter by the aggrieved party. It is considered as a tool to seek redressal if a party feels it has been wronged by the decision of the court.

# THANK YOU!

## Questions?

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