**APPLICATION UNDER SECTION 115 C. P. C. — REVISION IN DISTRICT COURT**

IN THE COURT OF THE DISTRICT JUDGE....................

Civil Rev. No..................... of 19.............................

U/s. 115 C. P. C.

A. B.................................................. Plaintiff/Applicant

*versus*

CD............................................ Defendant/Respondent

Valuation of suit property: Rs.....................

Nature of Suit: Suit for injunction

Court fee paid on Revision Application: Rs.....................

Sir,

The Revision application against the order dated.................... of the XVIII Additional Munsif,.................... in suit No..................... of 19.................... is most respectfully submitted on the following grounds:

**GROUNDS OF REVISION**

1. Because the learned Trial Court has failed to exercise his jurisdiction vested in him, in not considering the amendment application in its proper and legal aspect.

2. Because the amendment sought does not purport to change the nature of the suit, it is a suit for injunction against the defendant for restraining him from illegally closing the door, windows and sky lights of the plaintiff and complainant after having to his notice the correct facts about the nature of possession of the defendant over the servant heritage, asked to add a relief about compensation as envisaged in S. 32 of the Easements Act and its illustration which directly applies to the applicant’s case. The Learned Munsif has not given any consideration to this contention of the applicant and has arbitrarily passed the impugned order.

3. Because the applicant has also sought to amend the site plan of the property about which the relief of injunction is claimed. The learned, Munsif has not considered at all this part of the proposed amendment and has evaded to give his decision thereon.

**PRAYER**

It is, therefore, most respectfully prayed that the Revision application may be allowed, setting aside the order of the learned Munsif and allowing the application for amendment of the plaintiff.

Dated.................... Counsel for the Plaintiff

**CASE LAW**

***Section 115***

**HIGH COURT CANNOT REAPPRECIATE EVIDENCE AND CANNOT SET ASIDE CONCURRENT FINDINGS OF COURTS BELOW BY TAKING DIFFERENT VIEW OF EVIDENCE.**

It appears that both the Presiding Officers of both the Courts below have in fact inspected the building and came to the firm finding that the building is old and is in a dilapidated condition and, therefore, it needs reconstruction of the building and so the Order of eviction was passed by the trial court and the same was affirmed by the lower appellate Court.

It is well settled position in law that under Section 115 of the Code of Civil Procedure the High Court cannot reappreciate the evidence and cannot set aside the concurrent findings of the Courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non-appreciation or non-consideration of the material evidence on record by the Court below. Simply because another view of the evidence may be taken is no ground by the High Court to interfere in its revisional jurisdiction1.

**JURISDICTION TO EXTEND TIME.**

Trial Court had jurisdiction to extend the time under Section 148, C. P. C. on sufficient cause being made out. Condition precedent to enable the High Court to exercise its revisional jurisdiction under Section 115, C. P. C. was lacking2.

**JURISDICTION OF HIGH COURT.**

High Court while exercising the jurisdiction is competent not only to see the irregular or illegal exercise of jurisdiction but also to see to the legality or propriety of the order in question3.

**EXERCISE OF REVISIONAL JURISDICTION.**

High Court, exercising revisional jurisdiction could not interfere with the concurrent findings and set aside the order of eviction4.

**REVISION — MAINTAINABILITY.**

***Section 115***

The maintainability of the revision depends upon two conditions firstly that it must relate to a case decided by the Court subordinate to the High Court and secondly in connection with the case decided, no appeal lies thereto.5

**REVISION — MAINTAINABILITY.**

Where the Court was merely postponing consideration of issue so that it may hear both parties and decide matter it did not amount to case decided. Revision is maintainable.6

**REVISION — MAINTAINABILITY.**

***Section 115, Order 38, Rule 1***

Where in a suit seeking recovery of money, the plaintiff filed application seeking arrest before judgement of the defendant and on appearance of the defendant the application of the plaintiff was closed by the Court, against such order of the Court revision application was maintainable.7

**REMEDY UNDER SECTION 151 NOT ONLY DISCRETIONARY BUT EQUITABLE.**

The remedy under Section 115 is not only discretionary but at the same time it is equitable.8

**INVOCATION OF REVISIONAL JURISDICTION ON QUESTION OF PAYMENT OF COURT FEE.**

Though defendants would ask for enquiry with reference to the value of the Court-fee payable on the plaint, the defendants cannot have any grievance against the order overruling the objection to get him entitled to invoke the revisional jurisdiction of the High Court on question whether the plaintiffs have paid adequate Court-fee on the plaint or not.9

1. Masjid Kacha Tank Nahan v. Tuffail Mohammad, A.I.R. 1991 S.C. 45.

2. Johri Singh v. Sukh Pal Singh, A.I.R. 1989 Supreme Court 2073: 1989 (3) J. T. 582: 1989 Supp. (1) S.C. R. 17: 1989 (4) S.C.C. 403.

3. Rai Chand Jain v. Chandra Kanta Khosla, A.I.R. 1991 Supreme Court 744: 1991 (1) S.C.C. 422: 1990 (4) J. T. 638.

4. Chandmal v. Firm Ram Chandra and Vishwanath, A.I.R. 1991 Supreme Court 1594: 1991 A.I.R. S.C. W. 1568: 1991 (2) J. T. 553: 1991 (3) S.C.C. 130.

5. Chunnilal v. Shanta Devi, AIR 2001 Raj. 76.

6. Golikota Reddy v. Goli Raja Gopala Reddy, AIR 2001 AP 110.

7. S. Selvarathinam v. Rajasekharan Nair, AIR 2001 Kerala 1.

8. Caps & Containers v. Bank of Baroda, 2001 (1) CCC 56 (Guj. ).

9. Sundarrajan v. Vellai Vinayagar Koil, AIR 2001 Mad. 110.