

IN THE HIGH COURT OF ORISSA AT CUTTACK**CVREV Nos. 179 of 1995 and 274 of 1995*****Ashoka Industries Ltd.* *Petitioner******-versus-******Haribandhu Das and Others* *Opposite Parties*****Advocates, appeared in these cases:**

***For Petitioner* :** Mr. Pitambar Acharya
Senior Advocate
Mr. Samir Ku. Mishra, Advocate

***For Opposite Parties* :** Mr. B. Maharana, Advocate
(For O.P. No.2)
Mr. J. Katikia
Addl. Govt. Advocate

**CORAM:
THE CHIEF JUSTICE**

JUDGMENT

06.05.2022

Dr. S. Muralidhar, CJ.

1. These two civil revision petitions arise out similar set of facts involving the same parties and are accordingly being disposed of by this common judgment.

2. As far as CVREV No.179 of 1995 is concerned, the Petitioner challenges an order dated 1st August, 1995 whereby the learned Additional District Judge, Bhubaneswar (ADJ) recalled an earlier order passed by on 9th December, 1994 admitting the Petitioner's

Title Appeal No.58 of 1994 and rejecting the appeal as being "incomplete, defective and incompetent" in the absence of a copy of decree on the date, the same was presented and as the provision of Order XX Rule- 6A CPC is also not applicable on the date the appeal is admitted." In this revision petition, which was admitted on 14th August, 1995 status quo was directed to be maintained regarding the suit property. Subsequently, on 15th September, 1995 the proceedings in Execution Case No. 87 of 1995 in the Court of Civil Judge (Sr. Division), Bhubaneswar was stayed until further orders. By another order dated 18th September, 1995 the earlier status quo order was vacated in view of the stay of the execution proceedings. That interim order has continued ever since.

3. As far as Civil Revision Petition No.274 of 1995 is concerned, it challenges an order dated 4th August, 1995 passed by the learned ADJ dismissing the subsequent appeal being T.A. No.32 of 1995 filed by the Petitioner challenging the judgment and decree dated 16th November and 13th November, 1994 passed by the Civil Judge (Sr. Division), Bhubaneswar in O.S. No.223 of 1982-I dismissing T.A. No.32 of 1995 for non-filing of the judgment and decree. In the said civil revision No.274 of 1995 this Court passed an order dated 24th February, 1995 recording the submission of learned counsel for the Petitioner that he seeks to convert the petition to a writ petition. However, it appears that the said prayer was not allowed. On 6th July, 2017 a petition for substituting Opposite Party No.2 was allowed.

4. The background facts are that one Haribandhu Das filed Title Suit No.223 of 1982 in the Court of the Civil Judge (Sr. Division), Bhubaneswar under Order I Rule 8 of the CPC representing the Plaintiff No.2 seeking a declaration regarding “Permanent leasehold right over the land” and “for a decree of recovery of possession from Defendant Nos.1, 5 & 6.” The plaint was later amended to include a prayer for permanent injunction “restraining Defendants Nos.1, 5, 6, 18 and 19 from making any further construction and for a decree for mandatory injunction directing the Defendant Nos.1, 5, 6, 18 and 19 to demolish all construction on the suit land failing which the plaintiff may demolish all such construction/building etc. at the cost of Defendant Nos.1, 5, 6, 18 and 19 or in the alternative for a decree of mandatory injunction directing the Defendants to use, utilize the building constructed on the suit land as Gandhi Smruti Soudha to provide facilities for study of Gandhian culture and ideology and to provide hostel accommodation for Adivasi, Harijan and other economic backward students, for costs and for any other relief or release to which the Plaintiff is entitled to under law.”

5. The present Petitioner was the defendant No.1 in the said suit. It denied the allegations and claimed to be a bona fide purchaser of a value from its vendor under a sale deed (Ext.9) after due permission and claimed to be making payment of salami to the State of Odisha. According to the Petitioner, it had spent substantial sums from its own sources and through loan from the

financial institutions to construct and operate the ‘first-ever five star hotel in Odisha’.

6. The Orissa State Financial Corporation (OSFC) which had advanced loans to the Petitioner for the running of the said hotel, seized the hotel under Section 29 of the State Financial Corporation Act (SFC Act). According to the Petitioner, the stay initially granted was vacated by the trial Court. Although notice was issued in the said suit, the Plaintiff i.e. Respondent No.1 did not furnish the correct address of the present Petitioner (the defendant in the suit). The Petitioner was set ex parte in the suit which however proceeded against some other defendants who had no interest against the property in question. Since the written statement of the State Government was expunged by the Trial Court it also did not participate in the suit.

7. The Civil Judge (Senior Division), Bhubaneswar by judgment dated 17th November, 1994 decreed the above suit i.e. T.S. No.223 of 1982 on contest against the Defendant Nos.7, 11, 12, 13, 16, 17 and 18 (OSFC) and ex parte against other defendants.

8. The operative portion of the decree reads as under:

“That the suit is decreed on contest against defendant Nos.7, 11, 12, 13, 16, 17 and 18 and exparte against other defendants, but in the circumstances without any cost. That the plaintiff’s right, title and interest over the suit property is hereby declared and confirmed. That the Five Star Hotel standing on the suit property is held to be an accretion to the suit schedule land in favour of the

plaintiffs and that the plaintiffs shall use the same "GANDHI SMARAK BHAWAN". That the defendants who are in possession of the suit schedule land and Hotel are directed to give vacant possession of the suit land and building to the plaintiffs within three months hence, failing which plaintiffs can take recourse to law to get back possession of the suit property according to law."

9. Learned counsel for the Petitioner stated to have applied for a certified copy of the operative portion of the aforementioned decree under Order XX Rule 6A of the CPC and this was duly granted.

10. Thereafter, on 25th November, 1994 the Petitioner filed Title Appeal No.58 of 1994 in the Court of the learned ADJ, Bhubaneswar. As of that date neither was any decree drawn up nor was that sealed and signed. Consequently, Title Appeal No.58 of 1994 was filed by the Petitioner only with a certified copy of the operative portion of the judgment of the Civil Judge (Sr. Division), Bhubaneswar which being decree satisfied the statutory requirement of under Order XX Rule 6A of the CPC.

11. On 28th November, 1994 the learned ADJ passed an order, the operative portion of which reads as under:

"As decree has not yet been drawn up by the learned lower court, learned Advocate for the appellant has expressed his inability to file copy of the decree. But he has filed certified copy of the operative portion of the Judgment. A petition is filed on behalf of the appellant praying for stay of the operation of the Judgment passed by the Civil Judge (Sr. Division)

Bhubaneswar on 16.11.1994 in O.S. No.223 of 1982 (I). When the learned lower Court has not yet drawn up the decree, the appellant is unable to file the copy of it and, according to order 41, Rule 1, C.P.C. every memorandum of appeal shall be accompanied by a copy of the decree. The appellant cannot be blamed because decree has not yet been drawn up by the learned lower court. The appellant is given time till 16.12.1994 for filing certified copy of the decree. In the interest of justice status quo be maintained till 16.12.1994."

12. The Petitioner states that thereafter on 28th November, 1994 the decree was drawn up and the trial Court on 30th November 1994 sealed and signed it. According to the Petitioner, despite the Petitioner's counsel applying for a certified copy on the same day i.e. 30th November, 1994 it was made available to the counsel only on 1st December, 1994.

13. On 9th December, 1994 the matter was heard and the Appellate Court passed the following order:

"Record is put up today on the strength of an advance petition filed by the Advocate for the appellant who has prayed to admit the appeal as certified copy of the decree has already been filed before this Court and for stay of the operation of the Judgment till the disposal of the petition filed U/O. 39 rule 1 & 2 r/w 151 Cr.P.C. Heard, it is seen that the certified copy of the decree has already been filed. Admit, call for the L.C.R. Issue notice to the respondents fixing 31.1.95 for hearing.

The petition filed U/O.39 rule 1 & 2 r/w 151 C.P.C. be registered as Misc. Case and put up today for further order.

The operation of the judgment of the learned lower court is hereby stayed till 31.1.95."

14. According to the Petitioner, an application was filed by the Opposite Parties for rejecting the appeal memorandum without serving copy thereof to the Petitioner or its counsel. On the said application, the following order was passed by the learned 2nd ADJ, Bhubaneswar on 31st January, 1995:

"Order dtd. 31.1.95

The Advocate for the appellant is presented and files two petitions, both for extension of the order of stay passed on 9.12.94 until further order since the stay was operative till today.

The Respondent Nos. 1 and 2 have entered appearance executing vakalatnama in favour of Sri Bijan Ray, Advocate and his associates and have filed a petition to reject the memorandum of appeal on the grounds stated therein and another petition praying to order that before hearing on their above petition no other matter be heard. Copies not served but attached to the petitions.

The P.O. is on C.L. for today. L.C.R. has not been received. The Petitioners filed today be put up tomorrow i.e. 1.2.95 before the P.O. for consideration and further order. Copies of the petitions be served on the meantime.

The Advocate for the appellant submits that the order of stay granted on the last date may be extended till the next date or else the appellant would be highly prejudiced. After going through the record, I feel that in the interest of justice the

said order need be extended or else the purpose of the appeal would be frustrated.

Hence, the order of stay granted on 9.12.94 stands extended till the date fixed i.e. 1.2.95."

15. On 1st February, 1995 the learned Appellate Court (the Court of the ADJ) passed orders on the application of Opposite Party Nos.1 and 2 regarding rejection of the Appeal to the following effect:

"since the appeal has already been admitted, vide order No.4 dated 9.12.94, the memorandum of appeal cannot be rejected at this stage. The aforesaid petition for rejecting the appeal memorandum will be heard at the time of hearing of the appeal."

16. On 10th July, 1995 the restraint order passed by the Court was continued. On 25th July, 1995 the Appellate Court first took up the plea concerning maintainability and by the order dated 1st August, 1995 dismissed the appeal on the ground that it had not been filed with a copy of the decree it was not filed before expiry of the 15 days in terms of Order XX Rule 6 CPC. Challenging the above order dated 1st August, 1995 in the first mentioned civil revision i.e. CVREV No.179 of 1995 was filed.

17. One day prior to challenging the order dated 1st August 1995, the Petitioner filed Title Appeal No.32 of 1995 before the Court of the learned ADJ challenging the same judgment and decree dated 16th November, 1994 and 30th November, 1994 in O.S. No.223 of 1982-I. In the said appeal, the following order was passed:

"Memorandum of Appeal presented today by Mr. H.K. Mohanty and other advocates for the appellant being aggrieved by the judgment and decree dated 16.11.94 and 30.11.94 respectively passed by the Civil Judge, (Sr. Divn.), Bhubaneswar in O.S. No.223/82-I. The appeal memo is presented at a later hour i.e. at 4.55 P.M. No time today, the appeal memo is being affixed with C. fee worth of Rs.1/- only. The advocate for the Appellant files a petition seeking one week time to file the balance court fee required for the memorandum of appeal. Another petition is also filed praying therein that the certified copy of the judgment and decree filed in T.A.58/94 of this court is to be tagged in this appeal.

Put up on 4.8.95 with office note for further order."

18. However, on 4th August, 1995 learned Civil Judge (Senior Division), Bhubaneswar rejected the aforementioned T.A. No.32 of 1995 by the following order:

"Office note is put up. No steps taken on behalf of the appellant. The appellant is absent on repeated calls. Nobody appears on behalf of the appellant at the time of call for filing on the memo of appeal which was filed yesterday in late hours at 4.55 P.M. seen the office note. It is further seen that the memorandum of appeal has not been accompanied by a copy of the decree appealed from and of the judgment on which it is founded according to order 41, R-I C.P.C. the memorandum of appeal shall be accompanied by a copy of the decree appealed from and of the judgment on which it is founded. When the memorandum of appeal filed yesterday before the court has not been accompanied by a copy of the decree appealed from and of the judgment on which it founded, such a memorandum of appeal cannot be accepted by appellate court. So the memo of appeal is rejected for the reasons stated above."

19. It is challenging the above order dated 4th August, 1995 the second revision i.e. CVREV No.274 of 1995 was filed.

20. It is stated that again out of an abundant caution, the Petitioner filed T.A. No.88 of 1995 challenging the same judgment dated and decree passed in T.S. No. 223 of 1982. In the said appeal, notice was issued on the question of limitation. The said appeal is stated to be pending before the District Judge, Khurda, wherein it has been renumbered as T.A. No.62/88 of 1987/1995. It is stated that on 21st February, 2005 the Petitioner filed an application for withdrawal of the said appeal. On 14th December, 1994 the Petitioner out of abundant caution filed Misc. Case No.775 of 1994 under Order IX Rule 13 of CPC in the Court of learned Senior Civil Judge, Bhubaneswar for setting aside the ex parte decree passed against the Petitioner in the said suit.

21. A preliminary objection has been raised on behalf of the contesting Respondents in these petitions to the maintainability of the revision petitions. It is submitted that under Section 115 of the CPC as amended, there is no power in the High Court to entertain the present revision petitions. It is further submitted that failure to furnish the certified copy of the decree, appealed against along with the memorandum of appeal was fatal to the appeals, and, therefore, the learned Civil Judge (Senior Division), Bhubaneswar was justified in rejecting the two appeals.

22. Mr. Pitambar Acharya, learned Senior Advocate for the Petitioner, submitted that the order which has been challenged in the appeal was in the nature of a final order and decree in the suit which was decided ex parte against the present Petitioner. Even otherwise, it was not an interlocutory order against which no revision petition would lie. He referred to the wording of Section 115 CPC as amended and submitted that a revision petition was maintainable against such a final order in the appeal. Reliance is placed on the decisions in *Shiv Shakti Cooperative Housing Society, Nagpur v. Swaraj Developers (2003) 6 SCC 659*; *Prem Bakshi v. Dharam Dev (2002) 2 SCC 2* and *Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675*.

23. On the other hand, Mr. B. Moharana, learned counsel appearing for Opposite Party No.2 i.e. the Indian National Congress (INC), relied upon the decisions of the Supreme Court in *Jagat Dhish Bhargava v. Jawahar Lal Bhargava AIR 1961 SC 832* and *Phoolchand v. Gopal Lal, AIR 1967 SC 1470*.

24. The above submissions have been considered. Section 115 of the CPC reads as under:

"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.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

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.

25. A careful reading of Section 115 (1) CPC reveals that a revision petition would be maintainable against any order of a subordinate Court to the High Court, against which no appeal lies and if such subordinate Court has exercised a jurisdiction not vested in it or has failed to exercise a jurisdiction so vested or has otherwise acted illegally or with material irregularity. Section 115 (2) CPC states that the High Court shall not, "vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto".

26. In the present case, the order passed in the first appeal was by the learned ADJ, first in the nature of the final order and accordingly a decree was also drawn up on that basis. It was not an appealable order. The bar to the High Court entertaining such

revision petition as spelt out in Section 115 (1) and (2) CPC does not exist in the present case. It is seen that the orders dated 1st August 1995 and 4th August, 1995 finally decide the appeal by dismissing it on the ground that it was not accompanied by a certified copy of the decree. The Court is of the considered view that both these revision petitions are maintainable. Consequently, the preliminary objection to the maintainability of the revision petitions is negatived.

27. Turning now to the merits of the case, it is seen that a certified copy was applied for but was not made available by the time the limitation ended for filing the appeal. In **Jagat Dhish Bhargava** (*supra*), it was explained by the Supreme Court that in terms of Order XLI Rule 1 CPC although the filing of decree appears to be mandatory character, there was a distinction that could be drawn between the presentation of an appeal at the stage when a decree had been drawn and the appellant had not applied for it in time and one where the decree had, in fact, not been drawn up and an application has already been made by Appellant for a certified copy. It was explained as under:

"14. Let us then consider the technical point raised by the appellant challenging the validity or the propriety of the order under appeal. The argument is that O. 41, r. 1 is mandatory, and as soon as it is shown that an appeal has been filed with a memorandum of appeal accompanied only with a certified copy of the judgment the appeal must be dismissed as being incompetent, the relevant provisions of Order 41 with regard to the filing of the decree being of a mandatory character. It would be difficult to accede to the

proposition thus advanced in a broad and general form. If at the time when the appeal is preferred a decree has already been drawn up by the trial Court and the appellant has not applied for it in time it would be a clear case where the appeal would be incompetent and a penalty of dismissal would be justified. The position would, however, be substantially different if at the time when the appeal is presented before the appellate Court a decree in fact had not been drawn up by the trial Court; in such a case if an application has been made by the appellant for, a certified copy of the decree, then all that can be said against the appeal preferred by him is that the appeal is premature since a decree has not been drawn up, and it is the decree against which an appeal lies. In such a case, if the office of the High Court examines the appeal carefully and discovers the defect the appeal may be returned to the appellant for presentation with the certified copy of the decree after it is obtained. In the case like the present, if the appeal has passed through the stage of admission through oversight of the office, then the only fair and rational course to adopt would be to adjourn the hearing of the appeal with a direction that the appellant should produce the certified copy of the decree as soon as it is supplied to him. In such a case it would be open to the High Court, and we apprehend it would be its duty, to direct the subordinate Court to draw up the decree forthwith without any delay. On the other hand, if a decree has been drawn up and an application for its certified copy has been made by the appellant after the decree was drawn up, the office of the appellate Court should return the appeal to the appellant as defective, and when the decree is filed by him the question of limitation may be examined on the merits. It is obvious that the complications in the present case have arisen as a result of two factors; the failure of the trial Court to draw up the decree as required by the Code,

and the failure of the office in the High Court to notice the defect and to take appropriate action at the initial stage before the appeal was placed for admission under O. 41, r. 11. It would thus be clear that no hard and fast 'rule of general applicability can be laid down for dealing with appeals defectively filed under O. 41, r. 1. Appropriate orders will have to be passed having regard to the circumstances of each case, but the most important step to take in cases of defective presentation of appeals is that they should be carefully scrutinized at the initial stage soon after they are filed and the appellant required to remedy the defects. Therefore, in our opinion, the appellant is not justified in challenging the propriety or the validity of the order passed by the High Court because in the circumstances to which we have already adverted the said order is obviously fair and just. The High Court realised that it would be very unfair to penalise the party for the mistake committed by the trial Court and its own office, and so it has given time to the respondents to apply for a certified copy of the decree and then proceed with the appeal."

28. Again in *Phoolchand v. Gopal Lal* (*supra*), a preliminary objection was raised in the High Court to the maintainability of the appeal since it was not accompanied by the decree. The Supreme Court explained how one exceptional case was dealt with in *Jagat Dhish Bhargava* (*supra*) and that it was different from *Phoolchand's* case. It was observed as under:

"5. another exceptional case where in the absence of the copy of decree the appeal could be maintained. We have already indicated that the trial court did not frame a formal decree when it varied the shares and naturally Gopal Lal was not in a position to -file a copy of the decree when he

presented the memorandum of appeal to the High Court. Even when time was granted by the High Court and Gopal Lal moved the trial court for framing a formal decree, the trial court refused to do so. In those circumstances it was impossible for Gopal Lal to file a copy of the formal decree. It is unfortunate that when the matter was brought to the knowledge of the High Court it did not order the trial court to frame a formal decree; if it had done so, the appellant could have obtained a copy of the formal decree and filed it and the defect would have been cured. We do not think it was necessary for Gopal Lal to file a revision against the order of the trial court refusing to frame a formal decree, for Gopal Lal's appeal was pending in the High Court and the High Court should and could have directed the trial court in that appeal to frame a decree to enable Gopal Lal to file it and cure the defect. In such circumstances we fail to see what more Gopal Lal could have done in the matter of filing a copy of the decree. The fact that the trial court refused to frame a formal decree cannot in law deprive Gopal Lal of his right to appeal."

29. Further in *M/s. Ramnarain (P) Ltd. v. State Trading Corporation in India Ltd. AIR 1983 SC 786*, it was explained as under:

"30.In an appropriate case any party which derives any advantage under a decree or order may, depending on the facts and circumstances of the case, disentitle himself to challenge the same and will be estopped from filing an appeal against the same, It is also to be borne in mind that no execution of decree passed in a suit on the original side is normally permitted unless a certified copy of the decree is on the record in the execution proceeding. A certified copy of the decree is not available so long as the decree is not drawn up

and filed. The present appeal had been filed long before the decree had been drawn up and, therefore, there could be no question of execution of any decree at the time when the present appeal was filed. The question of the defendant appellant having obtained an advantage under the decree does not therefore, really arise. In the case of *Bhau Ram v. Baijnath*,⁽¹⁾ this Court observed at p. 362:

"It seems to us, however, that in the absence of some statutory provision or of a well-recognised principle of equity, no one can be deprived of his legal rights including a statutory right of appeal."

We have earlier held that no statutory provision deprives the defendant-appellant of his right to file the present appeal. We have carefully considered the facts and circumstances of this case and the facts of this case also do not attract any well-recognised principle of equity to deprive the appellant of his very valuable statutory right of appeal. The various passages from Halsbury relied on by Mr. Nariman which we have earlier quoted lend support to the view that the defendant-appellant in the instant case by reason of its conduct or otherwise is not estopped or has not become disentitled to file the appeal."

30. This Court in *Arjuna Charan Patnaik v. Purnanand Patnaik* **AIR 1968 Orissa 207** explained with reference to Article 123 of the Limitation Act, 1963 as under:

"3. Article 123 of the Limitation Act 1963 excluding the irrelevant portions runs thus:

"Description of application Period of Limitation
Time from which period begins to run.

123. To set aside a decree passed ex parte Thirty days The date of the decree....."

The learned Munsif was of opinion that the date of the decree was 5-1-1965 when the decree was sealed and signed The application was filed within thirty days from this date The main question for consideration in this revision is as to the meaning of the expression "the date of the decree in Article 123 of the Limitation Act There is no definition in the Act as to what "the date of the decree" means Order 20. Rule 7 C P. C lays down that the decree shall bear date the day on which the judgment was pronounced and. when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign he decree The date of the decree under this rule is 'the date of the judgment' and not 'the date of the signing of the decree' The C P C and Limitation Act are cognate statutes and in the absence of any express definition to the contrary. O 20, R. 7. C P C would govern the meaning of the date of the decree in Article 123 of the Limitation Act."

31. On the question of maintainability of the present revision petition, the decision in ***Prem Bakshi*** (*supra*) is instructive. There the Court has held as under:

"5. The proviso to sub-section (1) of Section 115 puts a restriction on the powers of the High Court inasmuch as the High Court shall not, under this section vary or reverse any order made or any order deciding a issue, in course of a suit or other proceedings except where (I) the order made would have finally dispose of the suit or other proceedings or, (ii) the said order would occasion a failure of justice or cause irreparable injury to the party against whom it is made. Under clause (a), the High Court would be justified in

interfering with an order of a subordinate court if the said order finally disposes of the suit or other proceeding. By way of illustration we may say that if a trial court holds by an interlocutory order that it has no jurisdiction to proceed the case or that suit is barred by limitation, it would amount to finally deciding the case and such order would be revisable. The order in question by which the amendment was allowed could not be said to have finally disposed of the case and, therefore, it would not come under clause (a)."

32. The above decision found support in subsequent decision in ***Shiv Shakti Cooperative Housing Society, Nagpur v. Swaraj (supra)*** has held as under:

"32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. But on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered

the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation."

33. The decision in *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675 is also to the same effect.

34. For all of the aforementioned reasons, this Court allows the two revision petitions, sets aside the impugned orders passed by the learned Appellate Court. Since two appeals against the same judgment have been filed, it is sufficient that one alone is heard. Accordingly, T.A. No.58 of 1994 is restored to file of the learned ADJ, Bhubaneswar for being proceeded by on merit in accordance with law. It will be listed there for directions on 4th July, 2022. Till such time, the Appellate Court passes an order on the application for interim relief, status quo as ordered by this Court will continue.

35. The civil revisions are disposed of in the above terms. The LCR if requisitioned be returned forthwith. A certified copy of this order be sent immediately to the concerned Court of the ADJ, Bhubaneswar.

(S. Muralidhar)
Chief Justice

S.K.Jena/Secy.