

was no mutual agreement among all these parties to substitute a new contract for the old contract, Amar Singh himself was not a party to the settlement which is incorporated in Exhibit P.A. dated the 28th November, 1950. The Excise Commissioner never agreed to absolve Amar Singh from his liability to the State. He appears to have agreed merely that on the performance of the new agreement the old obligation shall be discharged. The new agreement was never performed and the old agreement continued to regulate the relations between the parties. There was no new agreement which of itself affected the discharge of the obligation. At no stage did the Commissioner agree that he would not recover the amount from Amar Singh. In any case, there is nothing on the record to indicate that the Commissioner had power to rescind the old contract, to enter into a fresh contract on behalf of the State or to substitute Balak Ram and others as the debtors of the State.

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For these reasons I am of the opinion that the original contract continues to bind the parties to this litigation. I would accordingly uphold the order of the lower appellate Court and dismiss the appeal. The parties will, however, be left to bear their own costs.

B.R.T.

REVISIONAL CIVIL

Before Bhandari, C.J.,

UNION OF INDIA,—Petitioner

versus

M/s RAM SUKH DASS & Bros.,—Respondents.

Civil Revision No. 281-D of 1956

Code of Civil Procedure (Act V of 1908)—Section 115—  
Constitution of India (1950)—Article 227—Case decided—

1959  
Nov., 18th

*Meaning of—The Arbitration Act (X of 1940)—Section 13—Jurisdiction of the Court under—Nature of—Opinion given by the Court on a question referred to it—Whether open to revision.*

*Held*, that the expression “case decided” in Section 115 of the Code of Civil Procedure, 1908, refers to a case decided by a Court in its capacity as a Court. for the word “case” means any state of facts juridically decided. It is the duty of a Court of law to decide controversies which are brought before it and to pronounce a judgment which is binding and conclusive between the parties. The giving of advisory opinions is not the exercise of judicial function. An opinion given by a Court in its executive or administrative capacity cannot fall within the ambit of the expression “case decided”.

*Held*, that Section 13 of the Arbitration Act, 1940 imposes a statutory obligation upon the Courts to give advisory opinions upon questions of law referred to them by arbitrators. The jurisdiction exercised by a Court which proceeds to give an opinion on a case stated by an arbitrator is consultative. An advisory opinion cannot be regarded either as a judgment or as an order, for it does not finally determine the case. It merely advises the arbitrator to act upon the law as the Court states it and leaves it to him to decide for himself whether he should or should not act upon the advice given.. Consequently the help of Section 115 of the Code of Civil Procedure cannot be invoked nor would the High Court interfere with such an opinion in the exercise of its supervisory jurisdiction under Article 227 of the Constitution.

*Petition under Section 44 of Act IX of 1919, Punjab Courts for revision of the order of Shri Pritam Singh, Commercial Sub-Judge, Ist Class, Delhi, dated the 18th April, 1956, holding that the market rate at the place of procurement from where the goods were to be procure<sup>d</sup> and not the market rate of the place of supply.*

BISHAMBER DAYAL, for Petitioner.

GURBACHAN SINGH, for Respondent.

## JUDGMENT

BHANDARI, C.J.—The question which arises for decision in the present case is whether a revision is competent from an opinion given by a Court in exercise of its consultative jurisdiction under section 13(b) of the Indian Arbitration Act. Bhandari, C. J.

The facts of the case are very simple indeed, Messrs. Ram Sukh Dass and Brothers who are military contractors of Solon entered into an agreement with the Government of India for the supply of firewood to the military authorities in Delhi for the period 1st April, 1948 to the 31st March, 1949. Disputes arose in regard to the rate at which the contractors should be paid and the matters in controversy between the parties were referred to an arbitrator in accordance with the provisions of an arbitration clause. During the course of proceedings the arbitrator stated the following question of law in the form of a special case for the opinion of a Subordinate Judge at Delhi under the provisions of section 13(b) of the Arbitration Act, namely—

“Whether in the revision of rates for the supply of firewood the rates of the place of supply and not the place of procurement will govern the contract ?”

When this matter came up for consideration before Mr. Dhamija, a Subordinate Judge of Delhi, the latter expressed the view that the payment should be made in accordance with the rates which were prevalent at the place of supply. The contractors were dissatisfied with this order and presented a petition to this Court under section 115 of the Code of Civil Procedure. This petition was allowed and

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the order of the trial Court was set aside on the ground that the order in question was recorded by the trial Court without affording the parties a reasonable opportunity of being heard. The question which was propounded by the arbitrator was later dealt with by Mr. Pritam Singh, Commercial Sub-Judge at Delhi. He has now recorded an opinion which is not favourable to Government. Government are dissatisfied with this opinion and have come to this Court in revision.

Mr. Gurbachan Singh, who appears for the firm, takes a preliminary objection that this Court has no power to deal with this case under the provisions of section 115 of the Code of Civil Procedure, for the order under revision is neither a decision nor a judgment. Section 13 of the Arbitration Act provides that the arbitrator or umpire shall, unless a different intention is expressed in the agreement, have power to state a special case for the opinion of the Court on any question of law involved or state the award wholly or in part, in the form of a special case of such question for the opinion of the Court. This section imposes a statutory obligation upon Courts to give advisory opinions upon questions of law referred to them by arbitrators. The jurisdiction exercised by a Court which proceeds to give an opinion on a case stated by an arbitrator is consultative. An advisory opinion cannot be regarded either as a judgment or as an order, for it does not finally determine the case. It merely advises the arbitrator to act upon the law as the Court states it and leaves it to him to decide for himself whether he should or should not act upon the advice given. As pointed out by Bowen, L.J., in *Re An Arbitration between Knight and the Tabernacle Permanent Building Society* (1), this consultative jurisdiction of the Court does

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(1) (1892) 2 Q.B.D. 613, 619

not result in a decision which is equivalent to a judgment or order. The view taken in this case and similar other cases has been rendered obsolete in England by the enactment of section 21(3) of the Arbitration Act, 1950, which provides that a decision of the High Court under this section shall be deemed to be a judgment of the High Court within the meaning of section 27 of the Supreme Court of Judicature (Consolidation) Act, 1925, which relates to the jurisdiction of the Court of appeal to hear and determine appeals from any judgment of the High Court. No similar provision appears under the Indian Arbitration Act of 1940. It seems to me therefore that the opinion given in the present case cannot be regarded as a decision and consequently that the help of section 115 of the Code of Civil Procedure cannot be invoked.

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Mr. Bishamber Dayal contends that although a revision may not be competent from an order passed by a Court under section 13(b) of the Arbitration Act, it is open to the Court in exercise of the power of superintendence conferred upon it by Article 227 of the Constitution to interfere with the order if it comes to the conclusion that the order is wrong and has put forward a proposition of law which cannot be upheld. There can be no doubt that this Court has full power to interfere under Article 227 of the Constitution, but it seems to me that there is no occasion for interference in the present case which is favourable to the opposite party. The advisory opinion given by Mr. Dhamija cannot be regarded as an opinion in the eye of law for the order in which that opinion was embodied was set aside by me on the ground that it had been recorded in the absence of one of the parties. The only opinion which now holds the field is the opinion furnished by Mr. Pritam Singh. It would be open to the arbitrator either to accept

Union of India or not to accept this opinion, for as pointed out in  
 v. a preceding paragraph of this judgment the juris-  
 M/s. Ram Sukh a diction exercised by a Court under section 13(b)  
 Dass and Bros. is consultative jurisdiction.  
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After I had recorded the above order I started wondering whether the above decision was correct, for although an advisory opinion rendered under the provisions of section 13(b) of the Arbitration Act may not fall within the ambit of the expression "judgment" appearing in clause 10 of the Letters Patent, it may still fall within the ambit of the expression "case decided" appearing in section 115 of the Code of Civil Procedure. I accordingly heard the parties over again with the object of resolving the doubt which had arisen in my mind.

Section 115 of the Code of Civil Procedure empowers the High Court to 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 to pass such orders thereon as it thinks fit if any of the conditions set out in the body of the section is fulfilled. The expression "case decided" refers presumably to a case decided by a Court in its capacity as a Court, for in *Bibi Gurdevi v. Chaudhri Mohammad Bakhsh and others* (1), a Full Bench of the Lahore High Court expressed the view that the word "case" means any state of facts juridically considered. It is the duty of a Court of law to decide controversies which are brought before it and to pronounce a judgment which is binding and conclusive between the parties. The giving of advisory opinions is not the exercise of judicial function. An opinion given by a Court in its executive or administrative capacity cannot fall within the ambit of the expression "case decided".

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(1) A.I.R. 1943 Lah, 65

For these reasons I am of the opinion that the petition ought to be dismissed with costs. I would order accordingly.

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### INCOME-TAX CASE

*Before Bhandari, C. J., and Mehar Singh, J.*

COMMISSIONER OF INCOME-TAX,—*Petitioner*

*versus*

THE MOTOR & GENERAL FINANCE, LTD.,—*Respondent*

**Income-tax Case No. 4-D of 1955**

*Indian Income-tax Act (XI of 1922)—Section 66(2)—  
Finding of fact by the Tribunal—How far binding on the  
superior Court—Question of law—When arises.*

1959  
Dec., 24th

*Held*, that the findings recorded by a Tribunal on a question of fact are binding on all concerned. If, therefore, there is any competent and legally sufficient evidence reasonably tending to support the finding of the Tribunal on a question of fact, the finding must be deemed to be a finding of fact and may not be disturbed even if the Court is of the opinion that it would have come to a contrary conclusion if it had occupied the place of the Tribunal. The evidence before the Tribunal must be accepted as true, unless inherently impossible or improbable, and must be construed most favourably in support of the finding. If, however, there is no evidence to support the finding of the Tribunal, or if it is not legally sufficient to support the finding, or if there is no competent and relevant material to support the finding, or if the evidence is so improbable as to be incredible and amounts to no evidences, or if the finding is based wholly or partly on conjectures, surmises and suspicions, a question of law arises. The legal effect of evidence is a question of law. If the Tribunal comes to the conclusion that the business structure or an entire activity or organisation of a company has disappeared and if there is an entire failure of evidence to