consideration against the rent payable by the tenant."

"50. (1) Save as otherwise expressly provided in this Act, no civil Court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered, by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil Court or other authority.

* * * * * * * ",

and the combined reading of these provisions leaves no manner of doubt that the jurisdiction of civil Courts has been expressly taken away with regard to any payment made in excess by the tenant to the landlord. That being so, these petitions are allowed, the decision of the Subordinate Judge, Small Cause Courts is set aside. It will be open to the plaintiff to pursue his remedy in accordance with law in the proper tribunal. There will be no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before D. Falshaw, C.J., and S. S. Dulat, J.

UNION FIRE, ACCIDENT & GENERAL INSURANCE CO., LTD.,—*Petitioner*

versus

O. P. KAPUR, AND ANOTHER,—*Respondents.*

Civil Revision 493-D of 1960.

1962

Nov., 13th

Code of Civil Procedure (Act V of 1908)—S. 115—Order placing onus of issue on one party or the other—Whether can be interfered with in revision by High Court.

Held, that the placing of the onus of an issue on one party or the other by a subordinate Court is not a matter on which the High Court is entitled to interfere. From the language of section 105 of the Code of Civil Procedure it would appear that the general intention of the Code is that the ordinary method to be adopted by a party for contesting an order passed in the course of a suit which that party considers to be wrong but against which no appeal lies is to challenge it in an appeal filed after the decision of the suit in which the order has been passed.

Petition under section 115 of Code of Civil Procedure, 1908, read with section 44 of the Punjab Courts Act, 1918, for revision of the order of Shri Shiv Dass Tyagi, Sub-Judge, 1st Class, Delhi, dated 28th July, 1960, dismissing the application of the applicant with costs.

HARDAYAL HARDY AND M. K. CHAWLA, ADVOCATES, for the Petitioner.

GURBACHAN SINGH, ADVOCATE, for the Respondent.

JUDGMENT

Falshaw, C.J.

FALSHAW, C.J.—The facts in this case are that a suit was instituted by Union Fire Accident and General Insurance Co. Ltd., of New Delhi, against two defendants O. P. Kapur and Ram Kapur, for the recovery of Rs. 11,385, on the basis of two promissory notes for Rs. 5,000 and Rs. 6,000. The plaintiff's case appears to be that the pronotes were executed by O. P. Kapur, defendant No. 1 in lieu of certain sums embezzled or misappropriated by him when he was in the employment of the plaintiff company, and the other defendant was impleaded as surety. The principal issue in the case framed by the trial Court is "whether the promissory notes for Rs. 5,000 and Rs. 6,000 were executed by defendant No. 1, for consideration." The plaintiff company applied to the trial Court for the shifting of the onus on to the defendants to prove that the pronotes, the execution of which

by defendant No. 1 was admitted, were without consideration. A revision petition was filed in this Court challenging the order of the trial Court refusing to shift the onus. The case came before S. B. Capoor, J. on the 29th of March, 1962, and since there were conflicting authorities he has referred to a larger Bench, the question whether this Court can interfere under Section 115, Civil Procedure Code with the placing of the onus by the trial Court of a particular issue on one party or the other.

There are nudoubtedly decided cases which can be cited to support interference in revision under section 115 Civil Procedure Code by the High Court with almost any kind of an order which a subordinate Court can pass in the course of a suit, and there is equally no doubt that the High Courts in many of such interferences seem to have lost sight altogether of the limited scope of section 115 the provisions of which read—

> "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."

Union Fire, Accident & General Insurance Co. Ltd. v. O. P. Kapur and another

Falshaw, C.J.

It seems quite possible that the original intention of the legislature in drafting this section was that it was meant only to be applied in the case of decisions of subordinate Courts against which no appeal lay, and that in the opening part of this section, the words 'case decided' were used in the ordinary sense of a decision in a separate case. There is, however, no hope, short of a decision of the Supreme Court on the point, of ever returning to that position if that was indeed what was intended, and it is now well settled that a case decided can include certain kinds of interlocutory orders. It is, however, to be noted that in sub-section (1) of section 105, which is in the portion of the Code dealing with general provisions regarding appeals, there occur, the words "but where a decree is appealed, from, any error, defect or irregularity in any order affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal." From this, it would appear that the general intention of the Code is that the ordinary method to be adopted by a party for contesting an order passed in the course of a suit which that party considers to be wrong but against which no appeal lies is to challenge it in an appeal filed after the decision of the suit in which the order has been passed.

It is quite clear that no question of the lower Court having exercised the jurisdiction not vested in it by law, or having failed to exercise the jurisdiction so vested, can possibly arise with respect to most of the orders which are challenged in the High Court in petitions under section 115 of the Code, and in order to justify interference the impugned order has to be challenged on the ground that the lower Court has acted in the exercise of its jurisdiction illegally or with material irregularity. This clearly means that there has to be more than merely a mistake or a wrong order passed by the subordinate Court in order to justify interference.

Before I proceed to consider the cases cited which bear directly on the question whether the placing of the onus of a issue on one party or another is a proper matter on which this Court can interfere under section 115, Civil Procedure Code, I may state that interference of this kind has been known to lead to awkward and embarrassing situations. Ordinarily revision petitions are decided by a Single Judge and instances have been known in which a Single Judge has interfered in revision and corrected an order of the lower Court which he considered to be wrong in cases in which owing to the value of the suit the first appeal lay to the High Court and had to be heard by the Division Bench, and the view has been taken by the Division Bench that the order of the Single Judge was wrong but that getting it right entails difficulties.

On behalf of the petitioner, three cases have been cited in which interference with the placing of the onus by a lower court has been held to be justified on a petition filed during the pendency of the suit. Two of these are decision of A. N. Bhandari, C.J. in *Sir Sobha Singh and Sons* v. *Messrs. Bihari Lal Beni Parshad* (1) and *Union of India* v. *Shrimati Shanti Devi and another* (2). The other case is one which has been relied on by the learned Chief Justice in the second of these decisions. This is the decision of Reuben and Ray, JJ. in *Bir Babu* v. *Raghubar Babu and others* (3). In that case, the learned Judges seem to have been of the opinion that the wrong placing of the onus was calculated to cause irreparable loss to the injured party, which had no right of appeal, and no remedy, otherwise available. With due respect, this appears to me to be putting the matter too strongly

(1) I.L.R. 1956 Punj. 1247 = 1956 P.L.R. 432.
(2) 1957 P.L.R. 44.
(3) A.I.R. 1947 Patna 469.

Union Fire, Accident & General Insurance Co. Ltd. v. O. P. Kapur and another

Falshaw, C.J.

since I should have thought that ordinarily wherever the onus was placed, both parties would lead whatever evidence was available to them, and that in fact the fate of very few issues would depend on the placing of the onus. Indeed, this situation could hardly arise except where no evidence is led.

On the other hand this point was considered by a Full Bench consisting of Wanchoo, C.J. and Dave and Modi, JJ., in *Nagori Ibrahim and others* v. *Shahji Babumal and others* (4), and it was held that the placing of the onus could not be challenged in revision and that the proper remedy of the party aggrieved was to raise the matter at the stage of appeal as he was entitled to do so under section 105 Civil Procedure Code. Among the cases discussed in the course of the judgment was the Patna decision on which reliance had been placed by the petitioner in the present case. I am in respectful agreement with this decision and I, therefore, consider that the placing of the onus of an issue on one party or the other by a subordinate Court is not a matter on which the High Court is entitled to interfere in revision under section 115 of the Code of Civil Procedure, from which it follows that the present revision petition must be dismissed. I would, however, leave the parties to bear their own costs.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

AMOLAK RAM KHOSLA,—*Appellant*

versus

THE MUNICIPAL CORPORATION OF DELHI,—*Respondent*

Civil Reference No. 2-D of 1961

1962

Nov., 27th

Delhi Municipal Corporation Act (LXVI of 1957)—S. 126—Amendment of assessment lists—When takes effect—Provisional assessment—Whether can be made.

(4) A.I.R. 1954 Raj. 83.