

CHAPTER 15

References to the High Court

References to the High Court under Order XLVI of the Civil Procedure Code, 1908, and Sections 99 and 100 of the Punjab Tendency Act, 1817.

1. Reference under Section 113 and Order XLVI, Civil Procedure Code—(a) A reference to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, should be made only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.

(b) A proviso has been added to Section 113 of the Code by the Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 (No. XXIV of 1951). Now where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance or Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

2. “Reasonable doubt on a point of law” explained—A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a ruling of the High Court, unless some doubt has been thrown on the correctness of the same by a ruling of the Supreme Court. Nor has an Appellate Court, which has no jurisdiction to hear an appeal, any jurisdiction to make a reference.

3. Mode of reference—In making a reference the presiding Judge should be careful to conform to the requirements of Order XLVI, Rule I, of the Code of Civil Procedure by:

- (i) drawing up a statement of the facts;
- (ii) stating the point on which doubt is entertained; and
- (iii) stating his opinion on such point.

Each of the above statement should be precise and clear, or the High Court find itself compelled to return the reference for amendment under Order XLVI, Rule 5, of the Code of Civil Procedure.

Comments

While making reference, court must submit its opinion along with record. *Ganga Datt and others v. Mandir Naraya Deota*, AIR 1953 HP 31.

4. Optional and compulsory reference—It should be noted that references under Section 99 of the Punjab Tenancy Act, 1887, and under Order XLVI, Rule 6, of the Code of Civil Procedure are made at the discretion of the Court, as are also those under Order XLVI, Rule 7, when not required by a party to the suit. There is no such discretion in cases falling under Section 100 of the Punjab Tenancy Act, 1887, or Order XLVI, Rule 7, if required by a party.

5. References under Order XLVI, Rule 7—It should also be noted that, by the terms of Order XLVI, Rule 7, a reference may be made only when it appears to the District Court that a Court subordinate to it has by reason of erroneously holding a suit to be cognizable by a Court of Small Causes, or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested; unless this condition is fulfilled—that is, unless the Court is itself of opinion that one of these errors has been committed,—it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

6. Channel for reference—References under Section 100 of the Punjab Tenancy Act, 1887, and under Order XLVI, Rule 6 of the Code of Civil Procedure, may be made to the High Court direct, but references under Section 99 of the Punjab Tenancy Act, 1887, must be made through the District Judge who should forward them without avoidable delay.

7. References by Sub-Judge as a Court of appeal—If a Subordinate Judge sitting as a Court of appeal is of opinion that a reference ought to be made under Order XLVI, Rule 7, of the Code of Civil Procedure, he should submit the record of the case to the District Judge for orders with a statement of reasons.

8. Character of suit to be described in reference—It is essential that the true character of the suit should be described with precision and accuracy in the heading of the reference.

9. Reference under Section 99, Tenancy Act—When a subordinate Revenue Court has returned a plaint on the ground that the suit is one over which such Revenue Court has no jurisdiction, and the plaint is subsequently presented in any subordinate Civil Court, such Civil Court, if it considers that the suit is not in fact triable by a Civil Court, should not again return the plaint, but should refer the point at once under Section 99 of the Punjab Tenancy Act, XVI of 1887.

10. Parties should be heard before making reference—A reference by a Civil Court under Section 99 or Section 100 of the Punjab Tenancy Act, 1887, or under Order XLVI, Rule 6 or 7, of the Code of Civil Procedure shall not be made until the parties to the suit have had an opportunity of showing cause against such reference in the Court which proposes to make it.

11. Objections of parties to be placed of record—The Court making a reference under any of the sections mentioned in the preceding paragraph shall in its order of reference, certify that such opportunity has been given, and shall place on record the objections, oral or written (if any), of any party against the making of such reference, and, when the reference is under Section 100 of the Punjab Tenancy Act, 1887, any objection of any party to the effect that he has been prejudiced by the alleged mistake as to jurisdiction.

12. Notice of references to parties—The Court making the reference shall give notice, either orally or in writing, to such parties as attended or are represented in Court when the order of reference is made—

(i) that the attendance of the parties in the High Court at the hearing of the reference is not obligatory;

(ii) that any party desirous of attending at such hearing must enter an appearance at the office of the Deputy Registrar of the Punjab High Court on or before a date to be specified in the notice.

13. Date fixed for appearance in High Court—The date specified shall be such as to allow a reasonable time for the parties to appear in the High Court, and shall be a date not less than one month in advance of the date of making the reference.

14. Court shall satisfy that parties have been informed—The Court shall certify in its order (1) that the notice required by paragraph 12 has been duly given, orally or in writing as the case may be, and (2) the date specified in such notice.

15. Points to be noted in references under Sections 99-100 of the Tenancy Act—Every reference under Section 99 or Section 100 of the Punjab Tenancy Act, 1887, shall state the reasons for making the reference, and shall indicate the Revenue Court which, in the opinion of the Court making the reference has or had (as the case may be) jurisdiction under Section 77 of the Act over the suit in which the reference is made. The Revenue Court in which the referring officer thinks the decree should be registered, should be accurately described according to the nomenclature prescribed in Section 6 of the Punjab Land Revenue Act, 1887 [read with Section 75, 76 and 77, Clauses (1) and (2) of the Punjab Tenancy Act, 1887].

Comments

While making reference under this rule court is not to submit its opinion on merits. *Ganga Datt and others v. Mandir Narayan Deota*, AIR 1953 HP 31.

16. Necessary records to be sent along with order of reference—The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suit subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

17. Application of these directions to Revenue Courts—The above directions apply *mutatis mutandis* to Revenue Courts.

18. Reminder from High Court if no reply received—Whenever it is found that a reference made to the High Court has not been replied to, or intimation of a date having been fixed given within two months of making such reference, the attention of the Registrar should be drawn to the fact.