said above, help the petitioner-company. In the circumstances, I hold that no writ can issue to the respondents to accept the payment now.

In the result, though the order of the Commissioner of Income-tax dated 25th March, 1965, rejecting the disclosure statement is quashed, no relief can be given to the petitioner-company and the petition must, therefore, fail. Having regard, however, to the fact that it is possible that the petitioner-company may not have made the payment, in view of the rejection of the declaration, I leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Beofre Inder Dev Dua and R. S. Narula, JJ.

YOGESH CHANDER BAHREE,—*Petitioner*

versus

THE REGISTRAR, PUNJAB UNIVERSITY,—*Respondent*

Civil Writ No. 1894 of 1965.

March 22, 1966

Code of Civil Procedure (Act V of 1908)—Order XLVII, Rule 4(2) proviso (a)—High Court Rules and Orders Volume V—Chapter 1-A rule 10—Petition under Art. 226 Constitution of India, dismissed in limine—Application for review of that order—Notice of the application—Whether necessary to be given to opposite party—Order passed without notice reviewing earlier order of dismissal—Whether a nullity.

Held, that the requirement of proviso (a) to sub-rule (2) of rule 4 of Order 47 of the Code of Civil Procedure is mandatory for cases to which the Code of Civil Procedure is applicable and in which there is an opposite party who is entitled to appear and be heard in support of the order which is likely to be set aside in the review proceedings. The requirement is no doubt procedural but it is certainly not intended to be in the discretion of the reviewing Court to review a particular order which falls within the four corners of the proviso after giving notice to the opposite party or without giving such a notice. An order on an application for review without issuing a notice required by the above-said proviso would not be without inherent jurisdiction and would not, therefore, be a nullity and cannot be ignored by the affected party. Every Court has jurisdiction to pass a correct order as well as a *bona fide* incorrect order. The error in the incorrect order may be due to a factual mistake, a legal mistake or a jurisdictional mistake or irregularity. In either case, so long as the order is passed with inherent jurisdiction by a competent Court, no party to the order even if he had

no notice of the case in which the order was passed can claim to ignore it on the ground that it had no notice of it. If he is aggrieved of that order he must have it set aside or declared to be not binding on him in appropriate legal proceedings.

Held, that the respondent is not legally entitled to appear and support the order of summary dismissal of the writ petition when the review of that order was sought. The respondent had no right to come up at the preliminary stage and to say that the writ petition should not be admitted. Still at the review stage all that the petitioner was praying for was that the writ petition should be admitted and the respondent should be called by a notice to appear and to argue the case. When the respondent himself wants to be heard, he cannot be allowed to say that he should have been called to urge that he should not be heard which is another way of saying that no notice should have been issued to the respondent. At the stage of the review the petitioner was praying that the respondent may be called and the writ petition heard and disposed of on merits in the presence of the other side. In other words the respondent has no right to claim that a cause may not be dismissed *in limine* without hearing him. The right to address the Court accrues to a respondent only if and after a notice is issued to him or a case against him is otherwise entertained. There is still another aspect of this matter. It has often been held that dismissal of a writ petition *in limine* decides nothing and does not by itself bar the filing of a fresh petition for the same relief. The petitioner could, therefore, file a fresh petition on the new facts gathered by him. At the preliminary hearing of such a new petition, the respondent would admittedly have no right to claim notice before admission of the writ petition. For practical purposes there is no distinction in the circumstances of this case between the petitioner filing a fresh petition or asking for review on the basis of new facts.

Case referred by the Hon'ble Mr. Justice R. S. Narula, on 17th November, 1965 to a Division Bench for decision owing to the importance of the question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula on 22nd March, 1966.

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari or any other appropriate writ, order or direction be issued requiring the respondent to submit the entire record relating to the proceedings culminating in the issue of the order and after perusing the same, this Hon'ble Court be pleased to quash and set aside the same.

Jagmohan Sethi with S. K. Tuli, Advocates, for the Petitioner.

G. P. Jain with A. S. Mahajan, Advocates, for the Respondent.

ORDER OF THE DIVISION BENCH

The Order of the Court was delivered by:

NARULA, J.—My order of reference, dated November 17, 1965, which contains all the relevant facts of this case may be read and treated as a part of this judgment. The question of law which emerges for decision from those facts is whether the order of the Division Bench of this Court, dated 6th September, 1965, in Review Application No. 33 of 1965 readmitting this writ petition, which had originally been dismissed *in limine* on July 13, 1965, is a nullity in the eye of law on account of the order in review having been passed without notice of the review application to the Registrar of the Punjab University, the respondent in the case.

The procedure for the issue of appropriate writs of a civil nature under Article 226 of the Constitution is laid down in Part F(b) of Chapter 4 of Volume V of the Rules and Orders of this Court. At motion stage a writ petition goes up before a Division Bench which may either summarily dismiss the petition or order a *rule nisi* or a notice to be issued against the opposite party. The *rule nisi* or a notice is then served on the opponent in the manner prescribed in Order 5 of the Code of Civil Procedure for the service of summons upon a defendant in a suit. Return to the rule is made by filing an affidavit in the Registry of the Court. Rule 9 provides that if any issue on any material question of fact arises from the return made to the rule, the Court may allow oral testimony of witnesses to be taken in a writ case. The procedure to be followed in such an eventuality is laid down in the last portion of rule 9 in the following words:—

> "In such a case either party may obtain summonses to witnesses, and the procedure in all other respects shall be similar to that followed in original causes in the High Court."

No rule relating to the exercise of jurisdiction of this Court under Article 226 of the Constitution provides that the entire Code of Civil Procedure as such would be applicable to the hearing of writ petitions. Clause 27 of the Letters Patent of the Lahore High Court, which are applicable to this Court, provides that it is lawful for this Court from time to time to make rules and orders regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil Procedure. A perusal

of these provisions appears to show that except for the matters covered by rules 5 and 9 to which the Code of Civil Procedure has been specifically made applicable, in all other matters the trial of a case under Article 226 of the Constitution has to be conducted according to the procedure similar to that followed in original causes in the High Court. Some special rules of procedure for trial of original civil cases in the High Court are contained in Chapter 4-G of the same Volume. Special procedure for filing applications for review in this Court is laid down by rule 10 of Chapter 1-A of Volume V of the Rules and Orders. Rule 10 provides that every application for review of a judgment or order of a Division Bench or of a Single Bench of the High Court presented by an Advocate shall be signed by him and he shall certify that the grounds contained therein are good and sufficient grounds for the review sought. No such restriction as is contained in rule 4(2) of Order 47 of the Code of Civil Procedure is imposed by rule 10 *supra*.

The petitioner wants us to hold that the strict and rigid bar contained in proviso (a) to sub-rule 4 of Order 47 of the Code of Civil Procedure is not applicable to applications for review of an order dismissing a writ petition *in limine* without issuing any notice to the respondent and that the procedure for the hearing and disposal of petitions under Article 226 of the Constitution is contained exclusively in the special rules framed by this Court. On the other hand the counsel for the University has invited our attention to a Division Bench judgment of this Court (S.B. Capoor and P. C. Pandit, JJ.), in *Sona Ram and others* v. *Central Government and others* (1), wherein it has been held that in writ petitions where civil rights are involved the proceedings are in the nature of a suit by virtue of the provisions of section 141 of the Code of Civil Procedure and, therefore, the manner of the trial of suits provided in the Code applies to writ petitions so far as the same can be made applicable. It has been further held in that case that the fact that special rules have been framed by this Court for the issue of Civil writs in Chapter 4-F(b) of the High Court Rules and Orders, Volume V, would not change the position because the rules framed by the High Court are in addition to but not in substitution of the provisions of the Code. The provision of the Civil Procedure Code, the applicability of which was in dispute in *Sona Ram's case*, was section 151. The learned Judges had, therefore,

(1) I.L.R. (1963)2 Punj. 341=1963 P.L.R. 599.

no occasion in that case to deal with a restrictive provision like the one with which we are concerned. It is significant that the learned Judges, who decided *Sona Ram's case* took care to hold that the procedure prescribed by the Code is applicable only "as far as it can be made applicable". The ratio of that judgment is based on the provisions of section 141 of the Code itself. The question which the learned counsel for the petitioner has now raised is whether that section itself (section 141) applies to proceedings in the High Court or not. It is argued by him that section 4 of the Code provides that in the absence of any specific provisions to the contrary nothing in the Code should be deemed to limit or otherwise affect any special or local law or any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. The counsel submits that procedure for issue of writs and for filing of petitions for review in the High Court having been specifically provided in the High Court Rules and Orders, the Code of Civil Procedure is not applicable to those matters. In the view which we have decided to take of the main points canvassed before us in this case it does not appear to be necessary to go any further into this matter.

The whole argument of the respondent on the issue before us is based on proviso (a) to sub-rule (2) of rule 4 of Order 47 of the Code of Civil Procedure which reads as follows:—

> "Where the Court is of opinion that the application for review should be granted, it shall grant the same provided that—
>
> (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and
>
> ———————————".

The submission of Mr. Ganga Parshad Jain, the learned counsel for the University, is that the Division Bench of this Court had no jurisdiction to grant the application for review without previous notice to the University to enable the latter to appear and be heard in support of the earlier order of the Motion Bench dismissing this writ petition *in limine*. It is on this basis that it is argued that the order of the Division Bench readmitting the writ petition is a nullity. Reliance is firstly placed for this proposition on a judgment of the Division Bench of the Calcutta High Court

(Holmwood and Chapman, JJ.), in *Abdul Hakim Chowdhury* v. *Hem Chandra Das* (2). In that case it was held that non-compliance with the relevant proviso rendered the granting of an *ex-parte* application for review a nullity as it was prejudicial to the respondent and previous notice to him was necessary. The judgment of Holmwood, J. (with which Chapman, J., concurred) on the relevant point is contained only in the following passage:—

> "—— it is clear that the non-compliance with rule 4 of Order XLVII renders the granting of this application for review, which was prejudicial to the respondent, a nullity and that such an application could not be granted without previous notice."

What had happened in *Abdul Hakim Chowdhury's case* was that two first appeals were filed against a consolidated judgment of the trial court in two causes. One of those appeals (No. 2024) was admitted at the preliminary hearing under Order 41, rule 11 of the Code of Civil Procedure by Stephen and D. Chatterjee, JJ., on 2nd January, 1913. Meanwhile the other connected appeal (No. 790) came up before a Division Bench (Carnduff and Chapman, JJ.) under Order 41, rule 11 of the Code and was dismissed *in limine* on 24th June, 1912. The appellant then made an application for review of the preliminary order, dated 24th June, 1912 in Appeal No. 790. Without issuing any notice of the review application the Motion Bench (Carnduff and Chapman, JJ) allowed the application for review on the 13th of February, 1913 and readmitted appeal No. 790 also. At the final hearing of both those appeals preliminary objections were taken on behalf of the respondent to the effect that Appeal No. 2024 was liable to dismissal as it was not accompanied by the requisite certified copies and that Appeal No. 790 was liable to dismissal without going into the merits as the order admitting the appeal on a review petition without previous notice to the respondent was a nullity. Both the objections prevailed with the Bench of the Calcutta High Court in the aforesaid judgment, dated June 25, 1914, reported in *Abdul Hakim Chowdhury* v. *Hem Chandra Das* (2). No discussion of the point in issue before us beyond what is hereinabove quoted is to be found in the aforesaid judgment of the Calcutta High Court.

Mr. G. P. Jain fairly and frankly told us in the very beginning that he was referring to the above-said judgment of the Calcutta

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(2) I.L.R. 42 Cal. 433.

High Court merely in order to adopt the reasoning of that case as his argument, otherwise the view expressed in *Abdul Hakim Chowdhury's case* has concededly been disapproved by almost all subsequent Benches of the Calcutta High Court. This view appears to have been specifically disapproved for the first time by a Division Bench of that Court (Sir Asutosh Mookerjee and F. R. Roe, JJ.) in *Janaki Nath Hore* v. *Prabhasini Dassee* (3). In that case a regular first appeal was dismissed by a Division Bench (Carnduff and Richardson, JJ) on 1st December, 1913. On February 28, 1914, the appellant filed an application for review under Order 47, rule 1 of the Code to set aside the earlier order summarily dismissing the appeal. No notice of the review application was issued to the respondent. By an *ex parte* order, dated April 8, 1914, the Motion Bench allowed the review application, set aside the order, dated 1st December, 1913 and admitted the appeal. At the final hearing of the appeal before Mookerjee and Roe, JJ., two preliminary objections were raised on behalf of the respondent out of which the first objection was that the order passed in review on 8th April, 1914 was inoperative because it was made in contravention of rule 4 of Order 47 of the Code which requires that no application for review shall be granted without previous notice to the opposite party. Dealing with that objection the Bench of the Calcutta High Court observed and held as follows:—

> "As regards the first objection, it need not be disputed, to use the language of Lord Macnaghtan in the case of *Muhamed Zahiruddin* v. *Nuruddin* (4) that as a general rule, no order of review can be made without previous notice to the person in possession of the decree which is to be reviewed. But the substantial question is, who is the "opposite party" upon whom notice of the application should have been served in this case. The expression "opposite party" is not defined in the Code, but it may be taken to mean the party interested to support the order sought to be vacated or modified upon the application for review. Now, what was the order in the present case which was sought to be recalled by the appellants and what was the order which they endeavoured to get substituted in lieu thereof ? The order which they prayed might be recalled was to the effect that the appeal be summarily

(3) I.L.R. 43 Cal. 178.
(4) (1903) 14 Mad. L.J. 7.

dismissed; and the order which they wished to have substituted in its place was that notice of the appeal be served upon the respondent and that the appeal be heard on the merits after the record had been received. Can it be contended reasonably that the respondent was the "opposite party" within the meaning of the expression in the proviso to rule 4 of Order XLVII, that he was in fact interested to appear and support the order of summary dismissal, when the only order sought to be substituted therefor was that the appeal be heard in his presence ? In our opinion, the question must be answered in the negative. If we acceded to the contention of the respondent, the result would be that he would be subjected to needless harassment from which the Legislature intended to protect him by the introduction of rule 11, Order XLI of the Code. If it is obligatory upon the court to issue notice upon the respondent when an application is made to review an order of dismissal under rule 11 of Order XLI, the respondent must appear in answer to the rule to support the order of dismissal, without the record before the Court; and if the rule is made absolute and the appeal directed to be heard in the presence of the respondent, he would have to appear a second time to support the decree under appeal. This result could never have been intended by the Legislature. The view we take is in accord with that adopted in *Joy Kumar Dutt Jha* v. *Esharee Nand Dutt Jha* (5) where it was ruled that an application for review of an order of dismissal under section 25 of Act XXIII of 1861, which corresponds to rule 11 of Order XLI of the present Code, could be granted without the issue of any notice to the respondent. That procedure has been followed in numerous cases in this Court during the last 40 years, though we are informed that latterly in one or two solitary instances, amongst which may be mentioned *Abdul Hakim* v. *Hem Chandra Das* (2), the view has been taken that notice of the application for review should be issued upon the respondent. We are clearly of opinion that what has been the practice of the Court for a long series of years is in conformity with the law and we should not depart from it."

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(5) (1872) 18 W.R. 475.

The learned Judges of the Calcutta High Court also considered the alternative position of a notice being necessary and held in that connection as below:—

> "Even if the contention of the respondents that notice is essential is well-founded, it shows at best that the order has been made irregularly or with material irregularity in the exercise of the jurisdiction possessed by the Judges who granted the review. That order, consequently, can neither be ignored nor vacated by us. But it is not necessary to deal with this aspect of the case in fuller detail, because in our opinion the order was properly made, though notice of the application for review was not served on the respondent.

In repelling a similar objection against an order passed in review admitting a plaint which had earlier been rejected without giving notice of the review application to the defendant, Newbould, J., of the Calcutta High Court held in *Surendra Prasad Lahiri Chowdhury* v. *Attubuddin Ahmed* (6), as follows:—

> "There is a further point to be considered and that is whether at the time the review was granted there was any Opposite Party on whom notice could have been served. When the order rejecting the plaint was made, no summons had issued on the Defendant, nor could any summons be issued, since Section 27 C.P.C. only provides summons to issue where suits have been duly instituted, and until the plaint is registered, the suit has not been duly instituted. In the case of *Joy Kumar Dutt Jha* v. *Esharee Nand Dutt Jha* (5) which was followed in *Janakinath* v. *Prabhasini* (3), it was held that when an appeal is summarily dismissed by a Division Bench of this Court, that order can be set aside on review on an *ex-parte* application without notice to the Respondent. In the former of those cases, it was contended on behalf of the respondent that no review of judgment could be granted without a previous notice to the Opposite Party and it was held that there would be no Opposite Party, as the first application for admission of the special appeal was necessarily *ex parte*. It seems to me that these remarks are equally applicable

(6) A.I.R. 1922 Cal. 234.

to the case of the proceedings in Court in a suit before it reached the stage of the plaint being registered. They are necessarily *ex parte,* and following the principle of these rulings I hold that the order passed at that stage of the case can be reviewed without notice to the Defendant, who could not have appeared before Court when the order was made."

In *Official Trustee of Bengal* v. *Benode Behari Ghose Mal* (7), the Division Bench of the Calcutta High Court preferred to follow the law laid down in *Janaki Nath Hore's case* as against what had been held earlier in *Abdul Hakim Chowdhury's case.* The learned counsel for both sides state that since after the judgment of the Division Bench in *Janaki Nath Hore* v. *Prabhasini Dasee* (3), no Bench of that Court has taken the view which had found favour with that Court in *Abdul Hakim Chowdhury's case.*

In *Surajpal Pandey and others* v. *Utim Pandey and others* (8), Sir Dawson Miller, C.J., and Coutts, J., referred to the provisions of rule 4(2), Proviso (a) of Order 47 of the Code and held as below:—

"That rule provides that no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree or order a review of which is applied for. They contend that as no notice of the application was served upon them, they had no opportunity of appearing or being heard when the order restoring the appeal was made, and that, therefore, the order was bad in law. In any case they contend that they are entitled, as soon as the matter has been drawn to their notice, even in second appeal to a hearing. In my opinion the defendants' contention must prevail..... The order of the 17th of April, in terms dismissing the appeal for default, was in effect an order rejecting the memorandum of appeal. There is good authority to show that such an order is tantamount to a decree within the meaning of the Civil Procedure Code. See *Ayyanna* v. *Nagabhooshanam* (9),

(7) A.I.R. 1925 Cal. 114.
(8) 63 I.C. 99=A.I.R. 1922 Patna 281.
(9) I.L.R. 16 Mad. 285.

and *Rup Singh* v. *Mukhraj Singh* (10). The defendants, therefore, had at that time not only a decree of the Trial Court but also a decree of the Appellate Court in their favour, and except as provided by the rules, the Court had no power to deprive them of the right vested in them under those decrees. It is contended, however, that assuming the application for restoration could have been an application in review under Order XLVII, no notice was necessary to the defendants and that an order in review setting aside the previous order and restoring the appeal for hearing could be made *ex parte*, on the ground that there was no opposite party upon whom service of notice was necessary under the proviso of sub-rule (2) of rule 4 of Order XLVII. In support of this contention the decision in *Janaki Nath Hore* v. *Prabhasini Dasi* (11) is relied on. In that case it was held, dissenting from a previous decision of the same Court, that where an appeal had been summarily dismissed under Order XLI, rule 11, an application in review by the plaintiffs might be heard *ex parte* and the appeal restored for hearing without notice to the defendants. The ground for this decision appears to have been that there was no opposite party within the meaning of the proviso to rule 4 of Order XLVII at that stage of the proceedings. There does not appear to have been any settled practice of the Calcutta High Court at that time, and from the judgment it appears that in certain cases the contrary view has been expressed, notably in the case of *Abdul Hakim* v. *Hem Chandra Das* (12). In my opinion, the expression *opposite party* in the proviso to Order XLVII, rule 4, means the party interested to support the order or decree sought to be set aside or modified in the application for review. In the present case the defendants were the opposite party, and I can see no reason why the expression there used should be limited to cases in which such party has actually appeared in the appeal."

The view of the Division Bench in *Surajpal Pandey's case* was followed by U. N. Sinha, J., in *Pravash Chandra Kar* v. *Premchand*

(10) I.L.R. 7 All. 887.
(11) 30 Ind. Cas. 898.
(12) 30 Ind. Cas. 165.

Sahukar (13), wherein it was held that the requirement of Order 47, rule 4 of the Code is mandatory and that the said provision is applicable even to Courts of Small Causes. In that case the High Court proceeded to set aside an order passed on a review application whereby an earlier *ex-parte* order was reversed on the solitary ground that the order in review had been passed without notice to the defendant in a small cause suit.

The earliest judgment of the Madras High Court which has been brought to our notice on this point is that of Devadoss and Waller, JJ., in *Narayana Chettiar and another* v. *P. C. Muthu Chettiar and others* (14) wherein it was held that the requirement of notice under Order 47, rule 4 of the Code is imperative and an order passed without serving such a notice is illegal and not merely an irregular one and that the opposite party is not bound by the illegal order. Reliance for that view was placed on the dictum of the Calcutta High Court in *Abdul Hakim Chowdhury* v. *Hem Chandra Das* (2). The Madras Court disagreed with the subsequent Calcutta view reported in *Janaki Nath Hore* v. *Prabhasini Dasee* (3). The latest judgment of the Madras High Court to which our attention has been invited is that of a learned Single Judge of that Court in *Neelakantam Pillai* v. *Vadivelu Achari and three others* (15). The learned Judge expressly disagreed with the latter view of the Calcutta High Court and followed the earlier view contained in the judgment of that Court in *Abdul Hakim Chowdhury's case.* After referring to the various judgments of the Calcutta High Court and the Patna High Court as well as two judgments of the Lahore High Court the learned Judge observed as follows:—

> "With respect I am unable to agree with these decisions of the Lahore High Court. It is enough to point out that the said decisions cannot be reconciled with the clear and express terms of the provision of Order 47, rule 4."

Then the learned Judge proceeded to deal with some earlier judgments of the Madras Court itself and concluded the discussion on the point by holding that the requirements of the proviso in question are mandatory. The judgment then proceeds to consider

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(13) A.I.R. 1965 Patna 219.
(14) A.I.R. 1926 Mad. 980=I.L.R. 50 Mad. 67.
(15) (1964) 2 Mad. Law Journal 339.

the effect of non-compliance with the said provision. In this connection it was held in that case as follows:—

> "Does the failure to issue notice make the review order merely irregular or illegal liable to be set aside or does it render the order absolutely ineffective? This is the issue now. The distinction between an illegal order and an order without jurisdiction is visibly plain. The former binds the parties notwithstanding its legal infirmity; but the latter has no existence in the eye of law and cannot, therefore, affect the rights of the parties. The Court, it is said, has jurisdiction to pass a right order as well as wrong order; and the party adversely affected by a wrong order cannot unfetter himself from such order by merely proving it to be wrong.
>
> The foundation for the power to grant review is the latter provision; how it has to be exercised is governed by the former. In a loose sense, it can be said that the Court has no jurisdiction to pass an order of review without complying with the terms of rule 4. But, in my opinion, non-compliance with proviso to rule 4 regarding notice would be a jurisdictional error and not a defect of utter lack of jurisdiction or total absence of initial jurisdiction, which alone would render the order passed a nullity."

With the above observations the learned Single Judge of the Madras High Court gave way to the objection as he felt bound by an earlier Division Bench judgment of the Court in *Narayana Chettiar and another* v. *P. C. Muthu Chettiar and others* (14).

I may now refer to a few judgments of the Lahore High Court to some of which reference has been made by the Single Judge of the Madras High Court in *Neelakantam Pillai* v. *Vadiyelu Achari and three others* (15). A Division Bench of the Lahore High Court (Johnstone, C.J., and Shadi Lal, J.) in *Hari Singh* v. *Allah Bakhsh* (16), held that there is much to be said for the view that, when a case is restored after dismissal for default, it does not become *res integra* but is again before the Court in the condition in which it was at the

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(16) A.I.R. 1917 Lah. 379.

time of its earlier dismissal. The provisions of the proviso to sub-rule (2) of rule 4 of Order 47 of the Code were referred to in that judgment as merely "dealing with procedure". It was held that when the lower appellate Court was of the opinion that the application for review should be granted and so granted it, it was impossible to hold that the Court acted in contravention of rule 4. In *Gopal Mal Ganda Mal of Pindi Bhattian* v. *Hara Chand* (17), Abdul Raoof, J., followed with approval the judgment of the Calcutta High Court in *Janaki Nath Hore's case*. The learned Judge held that he could review the order of his predecessor rejecting the application for restoration without notice being given to the opposite party when the earlier order had been passed without notice. The same view was held by Scott-Smith, J., in *Abdul Karim and others* v. *Ram Singh and another* (18). It was held in that case that the hearing of the case was going on in the absence of the judgment-debtor when the order was passed and that it could not, therefore, be said that there was any opposite party to whom it was necessary to issue any notice for reviewing the earlier *ex-parte* order. Scott-Smith, J., also specifically approved and followed the ratio of the judgment of the Calcutta High Court in *Janaki Nath Hore's case*. The latest case of the Lahore High Court to which reference has been made is the judgment of Jai Lal, J., in *Gandu and others* v. *Mt. Nasibo and others* (19), wherein it was held in this connection as below:—

> "It is true that before the application for review can be granted, notice must be given to the opposite party and if such a notice has not been given, it is a good ground for an appeal. The question is whether, under the circumstances of this case, Nathu can come within the definition of "opposite party". I am inclined to agree with the view of the learned District Judge that he cannot. The proceedings against him were *ex parte* from the very beginning. He was a *pro forma* defendant. He did not become an appellant even when the appeal was originally preferred from the first order of the District Judge granting the application for review. It is only now that he has become an appellant. His real brother Amien was

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(17) A.I.R. 1923 Lah. 303.

(18) A.I.R. 1924 Lah. 350.

(19) A.I.R. 1938 Lah. 22.

present throughout the proceedings. Under the circumstances there is no reason to interfere with the order of the learned District Judge."

Reference has been made before us only to one judgment of the Allahabad High Court which is relevant to the question of law calling for our decision. This is a judgment of a Division Bench of that Court in *Laloo Ram* v. *Har Narain Lal and others* (20). An Insolvency Court had reversed its earlier *ex parte* order on an application for review. An appeal against the order passed in review was preferred before the District Judge which was dismissed by that Court. Against the order of the first appellate Court upholding the order passed under Order 47, rule 1 of the Code without issuing any notice to the respondent a revision petition was filed in the Allahabad High Court. While allowing the revision petition the learned Judges of the Allahabad High Court observed as below:—

"One such ground is mentioned in Cl. (b) of sub-rule (1) of Rule 7 of Order XLVII of the Code. That ground is that the order under appeal was in, contravention of the provisions of Rule 4. Rule 4 of Order XLVII lays down that an application for review shall not be granted without notice to the opposite party. If the present applicant can establish contravention of Rule 4, it would mean that the appeal before the learned District Judge was maintainable. ... .

In the instant case Lallu Ram creditor actually appeared before the Insolvency Court at the initial stage of the proceeding. But it appears from the record of the review proceeding that no fresh notice was given to Lallu Ram between 8th September, 1959 and 6th January, 1960. It may be that the order of adjudication dated 6th January, 1960 was duly published later on. But that does not alter the fact that the order of adjudication was passed without any notice to Lallu Ram creditor. We have seen that Lallu Ram creditor was a necessary party in the proceeding for adjudication. It follows that he was also a necessary party to the subsequent proceeding upon the review application. ... .

(20) 96 All. Law Journal 812.

The applicant has succeeded in establishing that the order of adjudication dated 6th January, 1960 was illegal, because the Insolvency Court did not follow the correct procedure prescribed by the Provincial Insolvency Act. In view of the errors of procedure committed by the Insolvency Court, no useful purpose will be served by remanding the appeal to the District Judge. The proper order will be to remand the review application to the Insolvency Court for disposal in accordance with law."

From a careful consideration of the various judgments of different Courts referred to above it appears to me that the requirement of Proviso (a) to sub-rule (2) of rule 4 of Order 47 of the Code is mandatory for cases to which the Code of Civil Procedure is applicable and in which there is an opposite party who is entitled to appear and be heard in support of the order which is likely to be set aside in the review proceedings. The requirement is no doubt procedural but it is certainly not intended to be in the discretion of the reviewing Court to review a particular order which falls within the four corners of the proviso after giving notice to the opposite party or without giving such a notice. I am equally clear on two things; firstly an order passed on an application for review without issuing a notice required by the above-said proviso would not be without inherent jurisdiction and would not, therefore, be a nullity. With the greatest respect to the learned Judges of the Calcutta High Court, who decided *Abdul Hakim Chowdhury's case,* I think that the error which a Court exercising powers of review under Order 47, rule 1 of the Code commits in allowing the application for review without issuing notice to the opposite party concerned may be a jurisdictional error and is, therefore, liable to be rectified in suitable cases even in the revisional jurisdiction of the High Court, but an order passed without giving requisite notice of the review application is not without inherent jurisdiction and is, therefore, not a nullity and cannot be ignored by the affected party. Every Court has jurisdiction to pass a correct order as well as a *bona fide* incorrect order. The error in the incorrect order may be due to a factual mistake, a legal mistake or a jurisdictional mistake or irregularity. In either case, so long as the order is passed with inherent jurisdiction by a competent Court, no party to the order even if he had no notice of the case in which the order was passed can claim to ignore it on the ground that it had no notice of it. If he is aggrieved of that order he must have it set aside or declared to be not binding on him in appropriate legal proceedings. The second matter on which I think,

I am clear is that on the facts of this case even if it could be held that the Bench hearing the review petition should have given notice to the respondent-University before granting the application for review, we are now within our rights after hearing the learned counsel for the University to hold that the order passed in the review proceedings was the only proper and correct order which should have been passed in the circumstances of this case. In this connection it is noteworthy that Shri Ganga Parshad Jain, the learned counsel for the respondent, has fairly and frankly conceded before us that if his technical preliminary objection fails, he has no defence on the merits of the case as the writ petition of Jai Narain against the same impugned order has already been allowed by this Court and the University has submitted to that decision and has not even preferred an appeal against it. In these circumstances it does not appear to be necessary to pronounce any final opinion on the two questions which emerge out of the preliminary objection raised by Mr. Jain. I have already left out the first question which relates to the applicability of all the provisions of the Code of Civil Procedure to the trial of writ petitions. On the second question, i.e., relating to the scope, meaning and effect of the relevant proviso to an order passed in review readmitting a writ petition which had been dismissed *in limine* at an earlier stage certain observations in the judgment of their Lordships of the Supreme Court in *Shivdeo Singh and others* v. *State of Punjab and others* (21), appear to be relevant. No doubt there is some distinction between that case and the one before us. In *Shivdeo Singh's case* after a writ petition under Article 226 of the Constitution had been allowed an application was made by a person who was not a party to the writ petition for being impleaded and for the whole case being reheard on the ground that he was affected by the order of the High Court. The second application had also been filed by way of a writ petition and the prayer therein was to review the earlier order passed under Article 226 of the Constitution. The High Court entertained the second writ petition for reviewing the earlier order. The party successful in the first case took up the matter to the Supreme Court. In those circumstances their Lordships of the Supreme Court held as follows :—

> "It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of "review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it."

(21) A.I.R. 1963 S.C. 1909.

According to the above-said judgment of the Supreme Court this Court has inherent jurisdiction to review its earlier orders passed under Article 226 of the Constitution. That being so, the validity of the orders which are now the subject-matter of attack cannot possibly be questioned.

Since the learned counsel for the parties have taken pains to argue the main question relating to the proviso in dispute, I would not hesitate to express my opinion in that connection. I think, it cannot be said that the respondent-University was legally entitled to appear and support the order of the summary dismissal of the writ petition when the review of that order was sought. The respondent had no right to come up at the preliminary stage and to say that the writ petition should not be admitted. Still at the review stage all that the petitioner was praying for was that the writ petition should be admitted and the respondent should be called by a notice to appear and to argue the case. When the respondent himself wants to be heard, he cannot be allowed to say that he should have been called to urge that he should not be heard which is another way of saying that no notice should have been issued to the respondent. At the stage of the review the petitioner was praying that the respondent may be called and the writ petition heard and disposed of on merits in the presence of the other side. In other words the respondent has no right to claim that a cause may not be dismissed *in limine* without hearing him. The right to address the Court accrues to a respondent only if and after a notice is issued to him or a case against him is otherwise entertained. The contention of the respondent that he has a right to claim that the writ petition should be dismissed *in limine* without hearing him appears to me to be contrary to the intention of rule 3 of Chapter 4-F(b) of the High Court Rules and Orders which corresponds to Order 41 rule 11 of the Code of Civil Procedure in connection with the first appeals. Rule 3 *supra* vests judicial discretion in this Court to dismiss a writ petition *ex-parte* or to give notice thereof to the respondent after service of which the case can be heard and disposed of. It does not appear to me to be a right of a respondent to insist on a notice being issued to him before admitting a writ petition. After all the respondent did not appear when the earlier order dated 13th July, 1965 was passed. There seems to be no reason why he should be allowed to claim the right to oppose the admission of the writ petition at the time of reconsideration of the matter. I am, therefore, in respectful agreement with the view of the Calcutta High Court in *Janaki Nath Hore's case.*

There is still another aspect of this matter. It has often been held that dismissal of a writ petition *in limine* decides nothing and does not by itself bar the filing of a fresh petition for the same relief. The petitioner could, therefore, file a fresh petition on the new facts gathered by him. At the preliminary hearing of such a new petition, the respondent would admittedly have no right to claim notice before admission of the writ petition. For practical purposes I see no distinction in the circumstances of this case between the petitioner filing a fresh petition for asking for review on the basis of new facts. I would, therefore, hold that there is no force whatever in the preliminary objection of the learned counsel for the respondent.

In view of the fact that the counsel for the respondent has conceded that after the decision of this Court in *Jai Narain's case*, the University has no defence to this petition on merits, this writ petition is allowed and the impugned order disqualifying the petitioner for two years under Regulation 12(b) of the Punjab University Calendar, 1962 from taking the matriculation examination of the Punjab University is set aside and quashed. There will however be no order as to costs.

B.R.T.

FULL BENCH

Before Mehar Singh, C.J., A. N. Grover and Harbans Singh, JJ.

SAHELA RAM, —*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 2189 of 1963

May 30, 1966

Punjab Agricultural Produce Markets Act (XXIII of 1961)—S. 15—Order removing a member of the Market Committee—Whether administrative or quasi-judicial—Reasons for removal mentioning grounds some of which not relating to but others relating to his conduct as such member—Explanation submitted by member found to be unsatisfactory—Order of removal—Whether illegal.

Held, that the test that finally determines the nature of the order is whether the authority making the order has or has not duty to act judicially. If it has