
Before Ujagar Singh, J.

STATE BANK OF INDIA,—Petitioner.

versus

BAL RAJ and another,—Respondents.

Execution Second Appeal No. 1128 of 1988.

December 12, 1988.

Code of Civil Procedure (V of 1908)—Ss. 21, 99, O. 21, Rl. 58—Suits Valuation Act (VII of 1887)—S. 11—Attachment of property in execution—Objection against attachment dismissed—Forum of appeal against such order—Determination of valuation for purposes of jurisdiction—No objection raised regarding lack of pecuniary jurisdiction of appellate Court—Such objection raised in second appeal—Effect of failure to raise such objection—Power of appellate Court to entertain such objection, stated.

Held, that the valuation for purposes of appeal will remain the same as was during the trial of the suit in which decree sought to be executed was passed. (Para 15).

Held, that section 21(2) of the Code of Civil Procedure, 1908 applies when in the court of first instance no objection as to its jurisdiction with regards to the pecuniary limits is not taken at the stage mentioned therein and in that case either the appellate court or revisional court will not allow such objection unless there has been a consequent failure of justice ;

Further held, that section 99 of the Code enjoins upon the appellate court not to reverse or substantially vary or remand any case in appeal on account of any mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or jurisdiction of the Court.

Further held, that section 99 itself does not debar the appellate Court from challenging the decree which on the face of it, is beyond the jurisdiction of the Court.

Further held, section 11 of the Suits Valuation Act, 1887 lays down a further condition that an objection that by reason of the over valuation or under valuation of a suit or appeal a court of first instance or lower Appellate Court which had no jurisdiction

State Bank of India v. Bal Raj and another (Ujagar Singh, J.)

with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless :

- (i) the objection was taken in the court of first instance or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in the memorandum of appeal to that Court, or
- (ii) The appellate Court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merit. Since the lower appellate court had no jurisdiction to hear the appeal because of the valuation mentioned in the decree of which execution was being sought and there is no question of over-valuation or under valuation in this case and therefore, section 11 of Suits Valuation Act will not be attracted at all. (Paras 20 & 21).

Execution Second Appeal from the order of the Court of Shri A. S. Sodhi, Additional District Judge, Gurdaspur, dated 4th February, 1988 reversing that of Shri Dalip Singh P.C.S., Sub-Judge 1st Class, Pathankot, dated 14th November, 1986 allowing the appeal and permitting to the applicant to remove the bales of waste cotton lying in the room from the mill premises.

R. K. Chhibar, Advocate, for the appellants.

Ravinder Seth, Advocate, for the respondents.

JUDGMENT

Ujagar Singh, J.

(1) The appellant filed a suit for the recovery of Rs. 13,54,479.75 paise against the present respondent No. 2. That suit was ultimately decreed by the trial Court,—*vide* its judgment and decree dated March 3, 1980. The defendant-respondent No. 2 filed a Regular First Appeal No. 1167 of 1980 titled as *M/s. Khosla Rice Mills vs. State Bank of India* and the same is pending in this Court.

(2) During execution by the appellant, respondent No. 1 filed objections under Order 21 Rule 58 of the Code of Civil Procedure (for short 'the Code') and after trial, the executing Court dismissed the objections on November 14, 1986. Objector-respondent No. 1 preferred an appeal before the District Judge and the same was heard by

the Additional District Judge. The appeal was accepted and the order dated November 14, 1986 passed by the executing Court was set aside. The decree-holder-appellant has filed this E.S.A. to challenge the order of the Additional District Judge on the grounds that the District Court had no jurisdiction to hear the appeal as the value for purposes of appeal was the same as in the suit i.e. Rs. 13,54,479.75 paise. So far as merits of the objections are concerned, the ground of challenge is that although no documentary evidence of the tenancy had been produced, but still the learned lower Appellate Court has gone into realm of conjectures and the lease alleged is said to be by a person who was not the authorised agent of the judgment-debtor. Another challenge is that the objector-respondent No. 1 never produced his books of accounts containing entry with regard to the payment of the alleged rent and that Bal Krishan, the alleged attorney, has specifically stated that he neither obtained any rent nor issued any receipt, whereas the objector has stated that he had paid one month's rent. Yet another challenge that neither the objector-respondent No. 1 nor his witnesses DW-2 Kishan Chand and DW-3 Tirath Ram, nor the documents Exhibits A-2 to A-5 connect the goods lying in the godown in dispute with the objector-respondent No. 1.

(3) Notice of motion was issued for May 27, 1988 only on the ground that the District Court had no jurisdiction to hear the appeal and after service of notice, I have heard counsel for both the parties only on the point of jurisdiction of the District Court.

(4) Learned counsel for the appellant has laid stress that the District Court had no jurisdiction to hear the appeal at all and the order of the District Court is, therefore, liable to be set aside as without jurisdiction. Learned counsel for the respondent No. 1 has vehemently argued that since no objection was made to the jurisdiction of the District Court, it cannot be challenged in appeal against the said order unless some prejudice to the appellant is proved and that mere discrepancies in the statements of the witnesses and the appreciation by the District Court of the same does not lead to presumption of prejudice. Learned counsel for the respondent No. 1 has cited various authorities relying upon the provisions of Sections 21 and 99 of the Code but without relying upon Section 11 of the Suits Valuation Act, 1887.

(5) Before discussing the authorities cited by counsel for both the sides relevant portion of Section 21 as also of Section 99 of the

State Bank of India v. Bal Raj and another (Ujagar Singh, J.)

Code may be produced as under for ready reference :—

“Section 21. (1)

21(2). No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.”

“Section 99 :—No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court :

Provided that nothing in this section shall apply to non-joinder of a necessary party.”

(6) As noted above Section 21 requires that objection to the competence of a Court with regard to pecuniary limit of its jurisdiction has to be raised in the Court of first instance at the earliest possible opportunity and in cases, where issues are settled, at or before such settlement, and if no such objection is raised, it cannot be allowed by the Appellate or Revisional Court unless there has been a consequent failure of justice. Section 99 enjoins upon the Appellate Court not to reverse or substantially vary any decree on account of mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court. Section 11 of the Suits Valuation Act, 1887 lays a further condition that an objection that by reason of the over-valuation or under-valuation of a suit or appeal a court of first instance or lower Appellate Court which had no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless :—

(a) the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in the memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(7) The sole question involved in this appeal is whether the lower Appellate Court had jurisdiction to hear the appeal or not, and what is the effect of raising no objection by the present appellant.

(8) Section 8 of the Suits Valuation Act envisages that when court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. The result is that there is no escape from the conclusion that the jurisdiction value of the suit was Rs. 13,54,479.75 paise and this value will remain the same for the purposes of execution application. It is further well settled that for appeal against an order in execution application value is determinable by the jurisdictional value of the suit and not by the value of the property involved in objections raised during execution. For this proposition I rely upon *Kiswar Ali Khan and another v. Mt. Salimunnissa* (1), wherein the original suit was valued at a sum exceeding Rs. 5,000 and the claim was decreed in part with the direction that the mesne profits should be determined in execution of the decree. For mesne profits a sum of Rs. 448-4-6 was awarded. The judgment debtor appealed to the District Court and that Court reduced the amount awarded by the court of first instance. The High Court held that the value of the original suit exceeded Rs. 5,000 and the proceedings in which the order complained of was made was a proceeding arising out of that suit. Thus, the appeal was not maintainable before the District Court, but was maintainable to the High Court and thereby the decree of the first Appellate Court was set aside. Another judgment to the same effect is rendered in *Nagendra Lal Chaudhuri v. Ashraf Ali Chaudhary* (1A), wherein the original decree was for Rs. 9,000. A sum of Rs. 8,000 was paid and the balance with interest came to about Rs. 2,000. An objection to the execution of the decree being allowed the decree holder appealed to the District Judge. It was held that the District Judge had

(1) A.I.R. 1915 Allahabad 349(1).

(1A) A.I.R. 1925 Calcutta 212.

State Bank of India v. Bal Raj and another (Ujagar Singh, J.)

no jurisdiction to hear the appeal as the original decree was for Rs. 9,000, which amount was beyond his jurisdiction.

(9) The learned counsel for the respondent has relied upon—*Messrs Lakshmi Datt Rup Chand v. Messrs, Goverdhan Dass P.A.*, (2), *Lieut. Col. Yogeshwar Raj Puri vs Yog Raj Puri and others*, (3), *Koopilan Uneen's daughter Pathumma and others vs. Koopilan Uneen's Son Kuntalan Kutty dead by LRs and others*, (4), *Ajaib Singh v. Baldev Singh*, (5); and *Gurmit Kaur and another v. Dhanto*, (6). On the basis of these judgments he has tried to rely upon the principles enunciated in the above said sections, but the discussion of these authorities will reveal a different result. The above authorities are taken one by one as under :—

(10) In *Messrs Lakshmi Datt Rup Chand's* case (supra) the facts were that the plaintiff-respondent instituted the suit for the recovery of Rs. 5201.82 paise as damages. On raising of preliminary issue that Jalandhar Court had no jurisdiction because no part of the cause of action arose within the territorial jurisdiction of that Court and that the Courts at Mirzapur in U.P. alone were competent to entertain the controversy. The trial Court came to the conclusion that the contract was made at Jalandhar for the two transactions in dispute as the offer for supply of the goods was accepted by the plaintiff there. On revision it was stressed that the conclusion drawn by the trial Court was not justified on the documents mentioned therein. The High Court refused to appraise the evidence for coming to the conclusion contrary to that arrived at by the court below. It was also observed that the same was the function of the Appellate Court which after the court below has disposed of the suit may be seized of the whole case and comes to its own conclusion on evaluating the entire evidence. Provisions of Section 21 of the Code were also discussed and it was held that **it was applicable both to the Appellate Court as well as to the Revisional Court and the Court restrained itself from expressing any opinion either way.** It was also observed that objection relating to territorial jurisdiction is taken out of the general principle that defect of jurisdiction in respect of the subject-matter cannot be

(2) 1965 (Vol. 67) P.L.R. 486.

(3) 1966 (Vol. 68) P.L.R. 214.

(4) A.I.R. 1981 S.C. 1688.

(5) 1986-1 (Vol. 89) P.L.R. 127.

(6) 1987(2) C.L.J. (C. & Cr. & Rev.) 596.

cured even by consent and that the question of territorial jurisdiction is more or less placed at par with irregularities which would vitiate the order only if resultant failure of justice is also established.

(11) In *Yogeshwar Raj Puri's* case (supra) a Division Bench of this Court having a Circuit Bench at Delhi held that when a case has been tried out by a Court on the merits and judgment rendered, it cannot be reversed purely on the ground of jurisdiction unless it has resulted in failure of justice. The provisions of Section 21 of the Code were discussed and it was held that no objection on the point of jurisdiction could be raised unless it is raised at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice. Reference was made to the case of *Kiran Singh vs. Chaman Paswan*, (7), 1955 S.C.R. 117 and the following observation passed therein was reproduced in this case :—

“The policy underlying sections 21 and 99 of the Civil Procedure Code, and section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there had been a prejudice on the merits.”

(12) In *Koopilan Uneen's daughter Pathumma's* case (supra) after reproducing Section 21(1) of the Code it was held that an objection to the place of suing may be entertained by an Appellate or Revisional Court, but the fulfilment of the following three conditions is essential :

- (1) The objection was taken in the Court of first instance ;
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement ;

(7) 1955 S.C.R. 117.

State Bank of India v. Bal Raj and another (Ujagar Singh, J.)

- (3) There has been a consequent failure of justice. All these three conditions must co-exist.

(13) In *Ajaib Singh's case* (supra) the facts were that the plaintiff instituted a suit for the recovery of Rs. 3,500 as principal and interest on the basis of a pronote. The defendant did not raise any objection regarding the territorial jurisdiction of the Court at Jalandhar. Issues were framed and evidence was recorded. Thereafter the case was fixed for argument on August 24, 1985 when the defendant made an application for amendment of the written statement incorporating therein that the cause of action had arisen at village Kala Singha, district Kapurthala and, therefore, the Civil Court at Jalandhar had no jurisdiction to try the suit. This amendment was allowed and the plaintiff came in revision before the High Court. After referring to sub-section (1) of Section 21 of the Code providing that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, unless there has been a consequent failure of justice. The revision was allowed on the basis of this principle as the defendant was deemed to have waived his right to jurisdiction in the circumstances of the case.

(14) In *Gurmit Kaur's case* (supra) plaintiff filed a suit claiming an amount of Rs. 7,800 paid to the defendants for sending one of the plaintiffs to a foreign country but the defendants failed to do so and did not return the amount. In the presence of respectables an agreement was executed by the defendant undertaking to pay the said amount upto April 6, 1981 but the defendant failed to pay. So many pleas were taken and it was also pleaded that the civil Court at Hoshiarpur had no jurisdiction. A decree for the recovery of Rs. 7,800 on the basis of agreement Exhibit P-1 with future interest at the rate of 6 per cent per annum was passed by the trial Court. Feeling aggrieved, the defendant filed an appeal before the District Court who took up the issue relating to the jurisdiction and came to the conclusion that the civil Court at Hoshiarpur had no jurisdiction to entertain the suit. After reversing the finding of the trial Court on jurisdiction, the appeal was allowed and the judgment and decree of the trial Court were set aside and the plaint was ordered to be returned to the appellants for presentation to the proper Court at Jalandhar. The plaintiff-appellants came in appeal and relying upon *Koopilan Uneen's*

daughter's case (supra) the appeal was accepted as the defendant could not show any failure of justice. The judgment and decree of the Additional District Judge were set aside and the appeal was remanded for decision on merits.

(15) The authorities relied upon by the learned counsel for the respondents have been discussed above and I am of the view that the above cases are distinguishable from the circumstances of this case. In this case the question is quite simple and the same is that the jurisdiction of the executing Court is not involved at all. The appeal against an order under Order 21 Rule 58 of the Code was competent only in this Court and not before the District Judge as the value of the claim could not determine the valuation for purposes of appeal. The valuation for purposes of appeal will remain the same as was during the trial of the suit in which decree sought to be executed was passed. During pendency of the appeal before the district Court no objection was raised and there is no question of the jurisdiction value having under-valued or over-valued, and the answer to the question involved depends upon whether the District Court had the jurisdiction to decide an appeal of which the valuation was about Rs. 13,54,479.75 paise. Apparently the District Court had no jurisdiction to decide the appeal and it had inherent lack of jurisdiction. This is also admitted that no objection was raised during pendency of the appeal and it has been raised only in this Court. Section 21 of the Code, as noted above, directs that objection to the pecuniary jurisdiction has to be taken in the court of first instance and if it is not taken according to the provisions of the section, no objection as to the competence of the Court can be allowed in any Appellate or Revisional Court unless there has been a consequent failure of justice. This section is attracted when the objection to the pecuniary jurisdiction of the trial Court is not taken, or if taken, it does not cause a consequent failure of justice on merits. This is not the situation in the present case and there is no question of the executing Court lacking any jurisdiction or consequent failure of justice. As already stated, appeal was required to be filed in the High Court but was filed before the District Court and consent of both the parties will not confer jurisdiction on the District Court to decide the appeal.

(16) Section 99 of the Code mandates that no decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any mis-joinder or non-joinder of parties of

causes of action or any error, defect or irregularity in proceedings in the suit, but this is subject to the limit that such mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in the proceedings does not affect the merits of the case or the jurisdiction of the Court. Therefore, where the jurisdiction of the Court passing the decree is involved vigour of Section 99 will not be attracted. The only restriction on the Appellate Court in such cases is the provisions of Section 11 of the Suits Valuation Act, 1887, which lays down that by reason of over-valuation or under-valuation of a suit or appeal a Court of first instance or lower Appellate Court which had no jurisdiction with respect to the suit or appeal a exercised jurisdiction with respect thereto an objection on that ground shall not be entertained by an appellate Court unless provisions of clauses (a) and (b) of sub-section (1) of Section 11, already reproduced, are satisfied. This provision is clearly applicable only when there is a question of over-valuation or under-valuation being raised. In this case such a question is not involved. Such a question was considered in *Kiran Singh and others v. Chaman Paswan and others*, 1955 S.C.R. 117 (supra) and a Bench of four Hon'ble Judges of the Apex Court held as under :—

“The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fall to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Manghyr was ‘coram non jndice’, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position.”

(17) In that case the effect of Section 11 of the Suits Valuation Act was considered and it was laid down that "a decree passed by a Court, which would have had no jurisdiction to hear a suit or appeal put for over-valuation or under-valuation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on over-valuation or under-valuation, should be dealt with under that section and not otherwise. So far as Section 99 of the Code is concerned, it was held about its operation that this Section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction, and this section, therefore, gives no protection to decrees passed on merits, when the Courts which passed them lacked jurisdiction except as a result of over-valuation or under-valuation". With a view to avoid this result, Section 11 was enacted. This authority has also been relied upon in *Sat Paul and another v. Jai Bhan Ananta Saini* (8), wherein the above observations of the Apex Court have been specifically quoted. In that case, the suit was not properly valued for purposes of court-fee and jurisdiction, the trial Court had upheld the plea of the defendant and found that the court-fee should have been paid on the amount of Rs. 4,000 which was the market value of the property and, therefore, this amount was the value for purposes of jurisdiction also. Deficiency in the court-fee was not made good within time and, therefore, the plaint was rejected under Order 7 Rule 11 of the Code. Plaintiff filed an appeal before the learned Senior Subordinate Judge, exercising enhanced appellate powers, who held that the plaint was properly valued for the purposes of court-fee and jurisdiction and, accordingly, remanded the case to the trial Court for decision. This was a second appeal against the order of Senior Subordinate Judge and after discussion of Sections 21 and 99 of the Code and Section 11 of the Suits Valuation Act it was held that the appeal before the Senior Subordinate Judge was filed on the valuation given by the plaintiff and not on the valuation as determined by the trial Court and, therefore, in entertaining the appeal, the Senior Subordinate Judge exercised jurisdiction over it by reason of under-valuation. Further holding, it was laid down that ordinarily a decision by a Court which has no jurisdiction over a matter would be null and void but in view of the dicta of the Lordships of the Supreme Court in *Kiran Singh's* case (supra) such decisions are liable to be interfered with by the appellate Co

(8) A.I.R. 1973 Punjab & Haryana 58.

State Bank of India v. Bal Raj and another (Ujagar Singh, J.)

only if prejudice such as is mentioned in Section 11 of the Suits Valuation Act results. It was a case of under-valuation and the appeal was rightly heard by the Senior Subordinate Judge and the decree of that Court could not be interfered with in view of the provisions of Section 11 of the Suits Valuation Act.

(18) A Division Bench of Madhya Pradesh High Court in *Patny Transport (Private) Ltd. Jabalpur vs. The State Transport Appellate Authority, M. P. and others*, (9), laid down that when a party having full knowledge of the relevant facts fails to object to the jurisdiction of a tribunal to deal with the matter before it and submits to such jurisdiction, he is precluded from questioning it afterwards, but this principle does not apply to cases where the tribunal suffers from want of inherent jurisdiction. Where there is inherent incompetency in a tribunal to deal with the question before it, the right to raise it could not be waived, because, in such a case, consent would not give jurisdiction.

Similarly, in *Shyam Nandan Sahay and others vs. Dhanpati Kaur and others*, (10), there was lack of pecuniary jurisdiction and it was held as under :—

“A distinction must be drawn between cases where there is an inherent lack of jurisdiction, apparent upon the face of the record, and cases where it is doubtful, or at least not so apparent, whether the court possesses jurisdiction or not. Where there is total lack of jurisdiction, nothing can confer the same on the court, and an objection to jurisdiction cannot be waived. Therefore, even if an objection has not been raised by any party, the entire proceeding of the court from the very initial stage is without jurisdiction and void. For example, if an application for grant of probate of a will has been filed in the court of a Munsif, all proceedings relating thereto in that court are null and void: Where, however, there is no total lack of jurisdiction, but on the contrary, the averments in the plaint, if not challenged manifestly bring the case within the jurisdiction of the court in which it is filed, its proceedings are perfectly with jurisdiction, and want of jurisdiction in such a case can rightly be waived.”

(9) 1966 Madhya Pradesh Law Journal 459.

(10) A.I.R. 1960 Patna 244 (Full Bench).

(19) There is another authority relevant for the purposes of this case, i.e. *The Controller of Stores and another vs. M/s. Kapoor Textile Agencies*, (11), wherein it was held:—

“On a careful reading of Section 11 of the Suits Valuation Act, I feel that it (Section 11) is limited to cases of under valuation and over-valuation and is not applicable to cases where the suit or the subject-matter has been properly valued but the same has been heard and decided by a Court, which on the face of it has no jurisdiction to proceed with it. To put it differently, where there is no dispute as to valuation given by the plaintiff or the applicant the lower Court had no jurisdiction, Section 11 of the Suits Valuation Act does not apply and the objection can be taken at any time.”

(20) In view of the above discussion, I am of the view that :—

- (a) Section 21(2) of the Code of Civil Procedure applies when in the court of first instance no objection as to its jurisdiction with regards to the pecuniary limits is not taken at the stage mentioned therein and in that case either the Appellate Court or Revisional Court will not allow such objection unless there has been a consequent failure of justice ;
- (b) Section 99 of the Code of Civil Procedure enjoins upon the Appellate Court not to reverse, or substantially vary or remand any case in appeal on account of any mis-joinder or non-joinder of parties of causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or jurisdiction of the Court;
- (c) Said Section 99 itself does not debar the Appellate Court from challenging the decree which on the face of it, is beyond the jurisdiction of the Court ;
- (d) Section 11 of the Suits Valuation Act, 1887, lays down a further condition that an objection that by reason of the over-valuation or under-valuation of a suit or appeal a court of first instance or lower Appellate Court which had

(11) A.I.R. 1975 Punjab and Haryana 321.

State Bank of India v. Bal Raj and another (Ujagar Singh, J.)

no jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an Appellate Court unless :

- (i) the objection was taken in the court of first instance or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in the memorandum of appeal to that Court, or
- (ii) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(21) In the cases discussed above, the facts therein were not similar as in the present case. In the present case, as already stated, the executing Court admittedly had the jurisdiction, but the lower Appellate Court had no jurisdiction to hear the appeal because of the valuation mentioned in the decree of which execution was being sought and there is no question of over-valuation or under-valuation in this case and, therefore, Section 11 of the Suits Valuation Act will not be attracted at all.

(22) In view of the above discussion, I accept this appeal on this ground and set aside the order of the lower Appellate Court with no orders as to costs.

(23) At this stage it has to be seen whether the case should be remanded requiring the lower Appellate Court to return the memorandum of appeal for presentation to this Court as Execution First Appeal or give a direction for formal return of the grounds of appeal in this Court itself and I adopt the latter with a further direction to the office that this appeal shall be deemed to have been instituted in this Court as Execution First Appeal with formal amendments enabling respondent No. 1 to claim period from the date it was instituted in the lower Appellate Court till today as period spent *bona fide* in pursuing his remedy of appeal. The office may thereafter put this Execution First Appeal for motion hearing before an appropriate Bench. The property claimed by respondent No. 1 shall not be auctioned till this matter is heard in motion hearing.

S. C. K.