



[SC] CPC - O. 9 R. 13, O. 43 R. 1(d), S. 115 - Revision Petition cannot be filed if an appeal is maintainable - Appeal is only applicable against the refusal to set aside the ex-parte decree under O.9 R. 13, not against an order allowing such an application - If appeal against the ex-parte decree is dismissed (except when withdrawn), the remedy under Order 9 Rule 13 cannot be pursued. [PLRonline 424683 (SC)]

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Ss. 115 and 47 and O. XXI, R. 54 - Revision validity of attachment not raised in objection under S. 47 CPC and raised for first time in revision - It could not be allowed to be raised.

The validity of the attachment proceedings was not raised by the defendants in his objections under Section 47 nor any objection was filed by the defendants under Order XXI, Rule 58 [CPC](#). It transpires that the defendants raised this ground for the first time in the revision which, in the opinion of the court, could not be allowed to be raised for the first time in a revision. In *M/s. Gangotri Sahkari Avas Samiti Ltd., Allahabad v. Smt. Usha Mukherji and others*; 2002 (20) LCD 284, the court held that a point raised in the revision for the first time, which not raised in the objection under Section 47, could not be raised in the revision nor can it be decided by the revisional court. Similarly, the Supreme Court in the case of *Khajan Singh (d) By LRs v. Gurbhajan Singh and others*; AIR 2007 SC 2941: 2007 (3) AWC 3158 (SC), has held that the revisional court has a limited jurisdiction and the exercise of the revisional power could be exercised on limited grounds and that the appreciation of evidence on the basis of material brought on record was within the domain of the executing court and that the revisional court could not interfere in a finding of fact.

[2008 SCeJ 005 \(All.\)](#)