

V.S. DREAM COACHING

D-Mall, Shakti Khand-2

Indirapuram Ghaziabad

For

H.J.S. P.C.S. (J) A.P.O. & CLAT

Year – 2023



Secret of success is to
know something
nobody else knows

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NEWSLETTER

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V.S. DREAM COACHING

1. Study Material-Law

Principles of Interpretation Of Statutes

Introduction

Since it's how laws are applied to actual events, interpreting statutes is an essential part of legal practice. The principles of statutory interpretation are crucial in the Indian legal system for guaranteeing the equitable and fair implementation of the law. These guidelines assist judges, attorneys, and other legal professionals in accurately interpreting statutory purpose and applying the law. The fundamental guidelines for interpreting statutes in the Indian context are covered in detail in this article. Laws must be applied to particular conditions and scenarios, which necessitates the employment of rules of interpretation. It entails analyzing the statute's content, taking into account its goals, looking at its legislative background, and using accepted legal theories and standards of interpretation. The objective is to ascertain the legislative intent, or the objective, that the legislators meant to accomplish while passing the law. When settling disputes or implementing the law in particular situations, courts, judges, and legal professionals are primarily responsible for interpreting statutory provisions. Different methods of interpreting statutes may be used, such as textualism, which emphasizes the words' plain meaning, and purposivism, which emphasizes the legislative intent and purpose behind the legislation.

Need for rules of Interpretation of Statutes

The legal system depends on the interpretation of legislation because it assures that the law is applied consistently, predictably, and fairly. It clarifies the rights, obligations, and responsibilities of people, businesses, and governmental institutions under the law and aids in setting legal precedents and principles that direct subsequent cases.

Types of Rules

There are majorly four rules which are used for the interpretation of Statutes the Literal Rule, the Mischief Rule, the Golden Rule and the Rule of Harmonious Construction.

1. The Literal Rule

The basic principle of interpretation is to attribute to words their exact and original meaning, as long as the words are clear and reflect the intent of the law. This rule stipulates that terms must be considered literally and from the point of view of their natural effect. It is also known as the normal reading rule, which means that the terms must be read as is, with no additions or substitutions of words when interpreted. The essence of the rule is that, "The focus should be on what the law says rather than what the law means." However, even with such a literal interpretation, the overall goal of the law must be considered.

2. The Mischief Rule

The mischief rule aims to ascertain legislators' intentions while interpreting statutes. In Heydon's case, it was established in the 16th century in the United Kingdom. It was decided that the main goal of interpreting a law should be to pinpoint the "mischief and defect" that the law was meant to address and offer a workable solution. This rule aims to address the issue that the earlier law didn't address, which prompted the drafting of the relevant Act.

3. The Golden Rule

Statutes can be interpreted more loosely under the golden rule than under the literal rule. If the literal interpretation leads to an absurd outcome, it gives the court permission to deviate from it. According to this concept, the court may interpret a legislation in a way that furthers its overall goals, even if doing so necessitates diverging from the terms' strict literal meaning.

The "British Rule," often known as the golden rule, allows for some latitude in the interpretation process by allowing words to be used in ways other than their exact meaning in order to prevent ludicrous results. In other words, this rule allows a judge to deviate from a word's usual meaning when doing so would result in an absurd outcome. The golden rule can be used both narrowly and broadly. When the rule is used with uncertain words, narrow use results. The rule is most frequently used in this way. When the rule is used to prevent results that are against public policy, it is widely used.

4. The Rule of Harmonious Construction

The principle of harmonious construction states that when a legislation contains various provisions that might appear conflicting, the provisions should be interpreted in a way that gives effect to all of them without making any of them

unnecessary or meaningless. This rule tries to guarantee that various provisions of the law can coexist in a rational and consistent way.

When two or more statutes or various sections of a single legislation dispute, the principle of harmonic construction is used. According to this rule, if there is a contradiction between two laws, the conflicting provisions should be reconciled to the maximum degree practicable. The rule is founded on the idea that every legislation should be considered as a whole, with provisions being consistently construed, because each one has a function. Unless there is a means to reconcile the disparities, interpretation shouldn't make any provision meaningless or utilize one provision to undermine another.

In the case of **CIT v. Hindustan Bulk Carriers AIR 2002 SC 3941**, the Supreme Court stated: “Courts must avoid direct overlap between the opposing provisions and must interpret them in a way that harmonises them.”

Conclusion

The process of deciphering legislative purpose and textual analysis must be balanced while interpreting legislation in the Indian setting. To uphold justice, uphold the rule of law, and guarantee that laws are enforced consistently and equitably, judges must take into account numerous interpretational concepts.

The Indian legal system guarantees that legislation remain applicable and useful tools for managing society while adapting to changing conditions by carefully applying these principles. Statutory interpretation guidelines are essential for ensuring that the law is applied consistently and effectively.

In short, The Mischief Rule seeks to determine the legislators' intent by filling in the legal gaps left by prior legislation, whereas the Literal Rule emphasizes the plain sense of words. The flexibility offered by the Golden Rule allows for deviation from its exact application in order to prevent ludicrous results. Finally, the Rule of Harmonious Construction unifies provisions that are in conflict in order to achieve the overall goal of the legislation. Courts work to promote the ideals of justice, fairness, and the efficient operation of the legal system by applying these norms.

B. Important Cases Full Report

IN THE SUPREME COURT OF INDIA

CPL Ashish Kumar Chauhan (Retd.)

Vs.

Commanding Officer and Ors.

Civil Appeal No. 7175 of 2021

HEADNOTE – Medical Negligence and Res Ipsa Loquitur - Where negligence is evident, burden of proof shifts to hospital

JUDGMENT

S. Ravindra Bhat, J.

1. The present civil appeal challenges an order of the National Consumer Disputes Redressal Commission, New Delhi (hereafter, "Commission"). The application by - CPL Ashish Kumar Chauhan (hereafter, "appellant") for compensation was dismissed by the Commission.

The Commanding Officer, 171 Military Hospital is arrayed as the first Respondent; the Medical Officer at the 171 Military Hospital ("171 MH") is the second respondent; the Principal Director, Directorate of Air Veterans is impleaded as the third respondent; the Commanding Officer of the South Western Air Command (Gandhinagar HQ) is arrayed as fourth respondent, and the Senior Medical Officer at the said Military facility is impleaded as the fifth respondent. The first, second and fifth respondents are, hereafter, referred to (unless the context otherwise requires) as "Indian Army"; and the third and fourth respondents, as "IAF".

I. Relevant Facts

2. The aftermath of the attack on Indian Parliament, (i.e., on 13 December 2001) was followed by heightened tensions at the Indo-Pak border. There was troop mobilization at the border; what is termed as a prolonged "eyeball to eyeball" confrontation between Indian armed forces and Pakistani armed forces. During this deployment and engagement, known as "Operation Parakram", the appellant, who was a radar operative/ technician -with the IAF, was deployed at the border. He had enrolled in the IAF from 21.05.1996 in a permanent position and held a combatant rank. His medical category was A4 GI [which is Category A].

3. In July 2002, as his services were needed, he was posted at 302 TRU (Transportable Radar Unit), Pathankot. He fell sick whilst on duty during the operation (Parakram) and complained of weakness, anorexia and passing high colored urine. He was, therefore, admitted to 171 MH, Samba. On 10.07.2002, whilst undergoing treatment at the aforementioned facility, Lt. Col Devika Bhat, posted as MO (Physician), advised him to undergo a blood transfusion.

One unit of blood was therefore, transfused to the appellant, for the management of severe symptomatic anemia. The said military hospital facility did not have a license for a blood bank but has been termed by the Indian Army as an "ad-hoc blood bank". Apparently neither any pathologist nor transfusion expert was posted at the facility as it was specifically opened up during Parakram.

The appellant alleges that 171 MH did not possess any facility to check markers of blood, including HIV before transfusion and the blood was indented from another military hospital - 166 Military Hospital ("166 MH") as per the SoP2 on "Adhoc Blood Bank". The treatment papers of the appellant were entrusted to the Senior Medical Officer of the 302 TRU, Pathankot, for maintenance purposes. In August 2002, the appellant was again admitted to 171 MH; and this time, his hemoglobin level was found to have increased from 11.5gm% to 13.0gm%.

4. In April 2014, the appellant again fell ill. This time, he was admitted to Station Medicare Centre, Head Quarter, South West Air Command (U), Gandhinagar. The test report dated 05.03.2014, reported "negative" for the HIV virus. While undergoing treatment at this facility, he suffered some complications and was consequently, transferred to Military Hospital, Ahmedabad. On further deterioration of his health at the Ahmedabad center, he was further transferred to INHS Asvini, Mumbai, an Indian Naval establishment.

While undergoing treatment, his blood samples were taken and on diagnosis, the Lab reports (dated 21.05.2014 and 23.05.2014), revealed that the appellant was suffering from Human Immunodeficiency Virus (hereafter, "HIV"). According to the appellant, these two lab reports meet the required parameters for a valid medical document, including mention of the lab reference number and name of the medical officer. The finding of the lab report returns as:

"Positive for HIV - I Antibodies by NACO Strelegy".

5. The appellant endeavored to trace the source of the virus and realized that the transfusion of virus infected blood at 171 MH Samba in 2002 was the cause of his condition. After the detection of the HIV virus, the first medical board was held on 11.06.2014 and as per the findings of the Medical Board, the infection

with HIV was made - "non-attributable to service". On being dissatisfied with the decision of the first Medical Board, the appellant demanded a copy of the documents relating to his blood transfusion at 171 MH, Samba in July 2002; access was however refused by the respondents on account of their unavailability.

6. In February of 2015, the appellant was hospitalized at a military facility in Ahmedabad owing to H1N1 (Swine) Influenza, Macrocytic Anaemia, Subhyalodid, and Haemorrhage along with Immune Surveillance. He requested information about his Personal Occurrence Report (POR) at 171 Military Hospital, Samba in 2002 which had to be kept by the Commanding Officer of the concerned unit.

Pursuant to the request, the fifth respondent, on 24.09.2014, wrote to the IAF record office, in New Delhi and by letter dated 29.09.2014, the appellant's medical case sheet was provided to him. The case sheet shows that though on 10.07.2002, one unit of blood was transfused to the appellant, but whether Enzyme Linked Immunosorbent Assay (ELISA) test was conducted before infusing the blood in the appellant's body was conspicuously absent from that medical case sheet.

7. Thus, Medical Boards were held on 12.12.2014 and 24.06.2015 and in terms of the medical board proceedings, the appellant's disability was attributable to service owing transfusion of one unit of blood at 171 Military Hospital on 10th July 2002. His disability and the disability qualifying elements for the purpose of disability pension were also assessed by the medical board @ 30% for two years.

By letter dated 22.03.2016, PCDA (P) Allahabad endorsed the findings of the Release Medical Board and agreed with the sanctioned disability pension. Based on the findings of the medical boards, the appellant was sent to INHS, Asvini Mumbai, for his further medical classification, and the specialist⁴ suggested that the appellant should be excused from physically exhaustive activities (including PT, Parade, and standing duties).

8. On 10.09.2015, the appellant requested for the release of certified copies of his medical records. They were not provided to him despite the fact that said records were essential for his treatment post discharge from the service. In fact, the appellant alleges that a condition was insisted on him to sign on the proceedings of a Release Medical Board which allegedly never took place.

On 31.05.2016, the appellant was denied extension of services and was discharged from service, without the due proceedings of the Release Medical

Board. At the time of release, the appellant was not provided with the Ex-Servicemen Contributory Health Scheme (hereafter, "ECHS") card within a reasonable time and an ECHS temporary card was issued only after an application⁵ was moved by him. Further, Rs. 15,000 were also deducted from the dues owed to him postretirement in the absence of an ECHS card for undergoing medical treatment.

9. On 22.09.2016, the appellant wrote a letter to obtain his disability certificate. That was denied to him by a letter dated 14.12.2016⁶, which stated that no such provision exists for issuance of printed disability certificate in the format as desired by the appellant and subsequently on 29.08.2017, the appellant's disability pension was sanctioned in addition to his service pension. Pertinently, the letter dated 14.12.2016, also mentioned that:

"3. Notwithstanding above it is certified that as per records held with this office, the disability "Immune Surveillance (HIV)" got afflicted due the blood transfusion that you received at 171 MH in July 2002. The disability is attributable to service."

10. Aggrieved by the denial of medical reports as to his blood transfusion, the appellant preferred an RTI application⁷ requesting for:

(i) copies of his willingness certificate as to blood transfusion;

(ii) information as to whether risks were disclosed to him about blood transfusion and whether appellant consented to those risks; and

(iii) copies of blood test report to ascertain blood group and Rh factor test report of that one unit of blood. PIO RTI Cell⁸ informed the appellant that the information sought by him was exempted under Section 8(1) of the Right to Information Act, 2005 (hereafter, "RTI Act"). Dissatisfied with the information provided, he appealed to the First Appellate Authority.

11. The Appellate Authority by its order⁹ rejected the appeal and observed that best efforts were made by the respondent authorities to trace the appellant's medical document and even admission and discharge documents were supplied to him whenever available with the respondent. It was further observed by the Appellate Authority that 171 MH is not an authorized military hospital facility and it was established as an 'ad hoc blood bank' with necessary blood being requisitioned from 166 MH.

It was further observed by the Appellate Authority that old documents (including the appellant's medical records) have been destroyed as per the necessary policy and while disagreeing with the findings of the Release Medical

Board (where HIV was attributed to the service), observed that in absence of any causative factor between blood transfusion and acquiring HIV infection, HIV infection cannot be attributed to the service and thus found no negligence on behalf of the hospital authorities. Relevant findings of the Appellate Authority are reproduced below:

"10. It is informed that as per the PE of the hospital, 171 Military Hospital is not authorized any blood bank and hence no Pathologist is authorized or posted, at any time. However, an adhoc blood bank was established during 'Op Parakram' i.e. in 2002. Blood would be requisitioned from 166 MH and stored at 171 MH."

"16. It is pertinent to ask here as to how a blanket & an assured statement be made that a blood transfusion carried out in 2002 is the only causative factor for acquiring HIV infection in 2014 without ascertaining facts about the same."

12. Meanwhile, proceedings of the Court of Inquiry (CoI) were held on 01.07.2018 to investigate circumstances under which the appellant was transfused blood at the 171 Military Hospital, Samba and the CoI concluded by its findings that blood provided to the appellant was duly screened for the HIV and other markers in vogue at the relevant time and on examination of all the witnesses, no negligence or lapse can be attributed on the part of physician or the support staff at the said military facility.

During the proceedings, Lt Col Devika Bhat, posted as MO (Physician) at the 171 MH, Samba deposed that the blood transfused to the appellant was duly screened as per the guidelines and all necessary precautions were taken to prevent HIV transmission. It was further observed by the CoI that while the Release Medical Board has opined that infection can be attributed to service, but the specialist opinion before the Release Medical Board failed to mention essential details to establish a causative link between the blood transfusion in 2002 and the detection of infection in 2014.

13. The CoI further observed that:

"6. It is further emphasized that Specialist Opinion given during RMB has not mentioned about history of any sexual exposure, administration of IV Fluids or injections or any prolonged Hospital treatment which are other modes of transmission by HIV in the intervening period between Jul 2002 to may 2014 (period between blood transfusion at 171 MH and detection as HIV positive). Hence categorically attributing HIV infection of the individual to blood transfusion given in Jul 2002 may not be in order."

The CoI also observed that:

"8. [...] (d) All the available documents have been examined and it emerges that there were no lapses or negligence on the part of treating physician and supporting staff at 171 MH Samba and the blood bank staff of 166 MH Jammu as all policy/guidelines were followed for blood bank, screening of blood before Transfusion of one unit of blood to 741570B Ex Cpl Ashish Kumar Chauhan."

14. The appellant filed a complaint before the Commission seeking compensation of ₹ 95,03,00,000 (₹95 crores 3 lakhs) plus litigation expenses of ₹ 10,000 per hearing and suitable pecuniary punishment to the delinquent officers.

II. Commission's Findings

15. The Commission dismissed the appellant's complaint and observed that no expert opinion was adduced or proved before it for establishing medical negligence during the blood transfusion against the respondent/opposite parties. It was also observed that no reason existed for the opposite parties to deny sharing of the appellant's medical records, and in fact, the discharge certificate, when found was duly supplied to the appellant.

16. The Commission also relied on provisions of Indian Medical Council (Professional Conduct Etiquettes and Ethics) Regulations, 2002 (hereafter "IMC Professional Conduct Regulations")¹⁰ to observe that the hospital facility was not bound to preserve the appellant's medical records beyond the period of three years and thus there is no reason to believe that the authorities deliberately denied the appellant's medical records to him.

The Commission also relied on the blood test report dated 05.03.2014 to hold that the appellant was not infected at the 171 Military Hospital, Samba, while denying the Medical Board's opinion dated 12.12.2014 and 24.06.2015 and a letter dated 14.12.2016 (as the same were not based on any evidence) and thus, no negligence was attributable to the respondents. Aggrieved by the findings of the Commission, the appellant has preferred an appeal before this court.

III. Proceedings in the present appeal

17. This court by an order dated 08.04.2022, considering the nature of the controversy involved in the impugned case, appointed Ms. Meenakshi Arora, learned senior counsel and Ms. Vanshaja Shukla, as amici curiae to appear on behalf of the appellant and assist the court.

18. By a letter order dated 25.04.2022, this court directed the respondents to submit the entire record pertaining to transfusion of blood on 10.07.2002 to the appellant. As a consequence, 171 MH and 166 MH again searched their records

and by letter dated 14.06.2022 and 13.06.2022 (from 171 MH and 166 MH respectively), submitted that they were unable to detect the appellant's medical records as they were destroyed in compliance with the policy of destruction of old documents.

IV. Submissions by the Appellant

19. The amici and the appellant argued that it is the onus of the respondents to establish that the two armed forces (Indian Army and IAF) were not negligent, because of the direct acts of their doctors and the hospital. Reference to a letter dated 12.06.2018 was made in which the Respondent No 1 admitted in writing that 171 MH was not authorized to operate any blood bank and therefore, no pathologist was authorized or appointed at the facility. The appellant also referred to an RTI reply¹¹ stating that "there was no transfusion medicine expert (doctor) available and no blood grouping and cross-matching test report is available".

20. The amici further argued that the respondents failed to provide any material evidence, such as the ELISA/HIV test and blood compatibility report of the blood unit that was transfused to the appellant in 2002, to demonstrate that they followed their own exhibited 'Transfusion Medicine Technical Manual and Standard Operating Procedures' that is to say that before any blood transfusion took place, it was compulsory to conduct an ELISA test of the blood unit to determine whether it was HIV infected or not, ensuring that it is safe for transfusion to HIV negative person.

The appellant placed reliance on cases like Smt. Savita Garg vs. The Director, National Heart Institute (hereafter, "Savita Garg")¹²; V. Kishan Rao v Nikhil Super Speciality Hospital & Another¹³; Nizam Institute of Medical Sciences v Prasanth S. Dhananka & Ors. (hereafter, "Nizam Institute of Medical Sciences")¹⁴, related to medical negligence, to support his contention that in cases of medical negligence, the burden of proof lies with the respondents and not with the appellant.

21. The amici and the appellant submitted that the respondents failed to secure a written informed consent bearing his signature both before the Commission as well as this court. As a consequence, the HIV negative report dated 5.3.2014 cannot be accepted. It was also contended that the report presented by the respondents is fraudulent and baseless since it was produced by them after a significant delay of more than seven years, which is contrary to Section 1.3.1 - "Maintenance of Medical Records" of the IMC Professional Conduct Regulations.¹⁵

Additionally, the report lacks important details such as part-I, Lab Reference number, the name of the specific pathologist, and is mentioned as referred by "self". To further counter the accusation that the appellant had concealed the HIV negative report dated 05.03.2014, he argued that the medical sheet and related documents were in the possession of the respondents. He was never given access to it, or a copy of it; hence, he could not have produced the same.

22. Reference was made to Chapter 16 of "The Guidelines for HIV Testing, March 2007", published by the National AIDS Control Organisation, Ministry of Health and Family Welfare, to highlight the importance of informed consent for HIV testing. The guideline states that any physician conducting an invasive procedure on a patient must obtain informed consent; in other words, the patient must be provided with adequate information about the necessity of blood transfusion, available alternatives, and the potential risks associated with both transfusion and non-transfusion options so as to make an informed decision.

23. Different medical opinions¹⁶, medical board proceedings¹⁷, and official letters¹⁸ received by the appellant from respondents after his discharge from service, including the legal opinion of the command judge advocate, HQ SWAC¹⁹, having categorically admitted the connection between the appellant's disability contracted due to reasons attributable to service and the blood transfusion of 10.07.2002, were relied upon.

The appellant also challenged the disputed medical board proceeding dated 11.06.2014, which stated that the condition was not attributed to military services, by placing reliance on policies of respondents²⁰, the Drugs & Cosmetics Act, 1940 and rules thereunder including IMC Professional Conduct Regulations, and the guidelines for HIV testing along with 'Standards for Blood Banks & Blood Transfusion Services'.

24. It was further argued that since the respondents have explicitly admitted that the appellant contracted his disability due to the blood transfusion, there is no need for further deliberation on the matter, as per Section 58 of the Indian Evidence Act, 1872; an admitted fact need not be proven.

25. The appellant argued that the respondents claimed to have no records related to the appellant and the blood transfusion pertaining to the year 2002, stating that they were destroyed. However, they presented a receipt, issue, and expense voucher dated 12.01.2002 for two units of B-negative human blood, which was supplied by 166 Military Hospital (Blood bank) to 171 Military Hospital.

The appellant questioned how the respondents were able to produce this document, which is available on record, after a gap of more than 20 years. The

appellant also referred to Section 18B21 of the Drugs and Cosmetics Act, 1940, and the Drugs and Cosmetics Rules, 1945, which pertains to maintaining of the records and providing the information. According to this section, every person holding a license under clause (c) of Section 18 is obligated to keep and maintain prescribed records, registers, and other documents.

26. It was further argued that the CoI conducted by the respondents was with the participation of the Indian Army officers and witnesses, without involving or summoning the appellant. It appeared to be a mere formality as no documents were presented before this court. It was argued that this entire procedure was not only violative of principles of natural justice, and fair play but a ruse to discount the medical certificates and conclusions recorded which pointed to negligence of the Indian Army.

This suggests that the records produced by the respondents were added as an afterthought. The respondents' contradictory statements about not maintaining records beyond three years, while at the same time also producing documents that are 7 to 20 years old, further weaken their case. Further, these records cannot be taken on record because the affidavit is signed by Capt. Alokesh Roy, officer In-charge of the Legal cell, Army Hospital (R & R) Delhi Cantt, claiming to be filed on behalf of the respondent.

The respondents have failed to produce the copy of the notice/summons served to the appellant under Section 135 of the Army Act, 1950 regarding the CoI, which alleged that the appellant was called for the inquiry but did not attend its proceedings. Furthermore, the respondents never challenged the Medical Board proceedings dated 12.12.2014, 24.01.2015 and 21.12.2015, or the certificates issued by it, before the appellant initiated legal proceedings against them.

27. The appellant further argued that the HIV expert's report cannot be considered as the said expert is a regular employee of the respondent's organization, and hence his opinion cannot be free from biases. He placed reliance on this court's decisions in *Fakruddin versus Principal, Consolidation Training Institute & Ors.*²²; *State of Uttaranchal & Ors. Vs. Kharak Singh*²³, and *A. K. Kraipak & Ors. Vs. UOI & Ors.*²⁴ Arguing further on biases, the appellant turned the Court's attention to the fact that one of the members of the Commission bench was a retired Defence Secretary.

28. It was further argued that due to him being HIV positive, the appellant was deemed unfit for re-employment and extension of service. Consequently, he was discharged from permanent service in the Indian Air Force. In fact, he was later selected by the Food Corporation of India. But, due to his HIV positive status,

the Food Corporation of India rejected the appellant on medical grounds. Additionally, his medical condition led to divorce and the loss of family support.

29. The appellant relied on Chapter 3 of the National Guidelines for HIV testing to assert that antibody detection tests are not effective during the window period when antibodies are not yet detectable. Additionally, the appellant referred to Guidelines on HIV Testing (March 2007) published by the National AIDS Control Organisation (hereafter "NACO"), which states that the disease's rate of progression depends on viral characteristics and host factors, ranging from 1 year to more than 15-20 years. NACO has also certified that around 5% of HIVinfected individuals, known as "long term non-progressors" (hereafter, "LTNPs"), do not experience disease progression for an extended period.

It was urged that the appellant's case fell under such a category. To further substantiate this submission, the appellant cited a judgment from the Supreme Court of New Jersey in the case of State ex rel. J. G., N. S. & J. T25. wherein, the court observed that a negative HIV test result for the accused does not necessarily mean they are not infected with HIV. It could be due to the "window period", during which HIV tests may provide inaccurate results.

30. It was argued that respondents had, through various letters²⁶ admitted that the appellant qualifies as a consumer under Section 2 (l) (d) (ii) of the Consumer Protection Act, 1986, (hereafter "CPA 1986") as the appellant, being a permanent employee of the IAF, availed medical services from the respondents as defined under the same section.

The appellant placed reliance on the judgments of this court, including M/S. Spring Meadows Hospital & Anr. versus Harjol Ahluwalia Through K.S. Ahluwalia & Anr. (hereafter, "Spring Meadows")²⁷; Kishore Lal vs. Chairman, Employee State Insurance Corporation (hereafter, "Kishore Lal")²⁸; Laxman Thamappa Kotgiri v G. M., Central Railway (hereafter, Laxman Thamappa Kotgiri")²⁹; and Savita Garg vs. The Director, National Heart Institute³⁰, to further substantiate his submission.

31. The amici and the appellant urged the court that the facts show that there was negligence and reckless disregard of the ordinary care expected of the medical experts, when the blood transfusion took place. It was contended that the court should grant all the reliefs available in law, such as monetary compensation towards loss of income, till the date of normal superannuation, taking into account that he would have been in a position to retire as a Junior Commissioned Officer, at the age of at least 58 years.

At the very least, his services as non-commissioned personnel would have been ordinarily extended for another seven years. The amici submitted that the present condition of the appellant is fraught as his condition has worsened and he is almost in a state of dependency as he has to rely on the assistance of a support person, cannot move about freely and is frequently fatigued.

It was further submitted that the transfusion, without seeking informed consent, without ensuring observance of minimum safeguards and later, stonewalling the appellant, denying access to his medical records, and even seeking to deny their liability, by holding a CoI, - the reason for whose setting up was only to discount previous medical certification- and the insinuations aimed at the appellant, caused him immense mental agony, for which suitable and deterrent compensation is warranted.

It was also submitted that the attitude and behaviour of the respondents in providing treatment to the appellant, which he is entitled to in accordance with the applicable rules, as a person discharged on medical grounds, and certified to a certain extent of disability, has eroded his confidence. Therefore, the court should issue suitable directions for his continued medical treatment, in an alternative manner, or suitably compensate him.

It was highlighted that the response and indifference of the respondents has caused intense mental agony to the appellant, which should be separately compensated. The amici also highlighted that the appellant's effort to secure employment has turned to naught, because though he was almost selected for a post, the future employer, i.e., the Food Corporation of India (FCI), rejected his application, when it became aware that he was HIV positive. A response to the appellant's RTI query, given by the FCI on 17.02.2018 in this context was placed on the record.

V. Submissions on Behalf of Respondents

32. Learned counsel appearing for the Indian Army and IAF, Additional Solicitor General - Mr. Vikramjit Banerjee (hereafter "ASG") submitted that the appellant failed to prove medical negligence attributable to the respondents and that no medical report submitted on record establishes negligence on their part.

33. It was submitted by the ASG that the appellant is not a 'consumer' in terms of Section 2(1)(d)31 of the CPA 1986, he was entitled to, and availed medical services from armed forces hospitals free of cost and the services provided by the armed forces hospital is not a service under the Section 2(1)(o)32 of the CPA 1986. Such services are provided without any consideration. Reliance was

placed on following observations of this court's judgment in Nivedita Singh v Dr Asha Bharti³³:

"6. A reading of the above para shows that a medical officer who is employed in a hospital renders service on behalf of the hospital administration and if the service as rendered by the Hospital does not fall within the ambit of 2(1)(o) of the Act being free of charge, the same service cannot be treated as service Under Section 2(1)(o) for the reasons that it has been rendered by medical officer in the hospital who receives salary for the employment in the hospital. It was thus concluded that the services rendered by employee-medical officer to such a person would therefore continue to be service rendered free of charge and would be outside the purview of Section 2(1)(o) of the Act."

34. The learned ASG relied on the judgment of Jacob Mathew v State of Punjab³⁴ and Martin F D'Souza v Mohd Ishfaq (hereafter, "Martin F. D'Souza")³⁵ to contend that in cases of medical negligence, courts must refer the matter to a competent doctor or a specialized committee in the relevant field and only on the recommendation of such expert giving prima facie finding of medical negligence that doctor should be summoned. And in the present case, the appellant has not produced any expert opinion to substantiate his claim of medical negligence.

35. Reliance was also placed on the medical report dated 05.03.2014, issued when the appellant was admitted to the hospital facility at MH Ahmedabad, owing to Pneumonia. This medical report stated that the appellant was detected HIV negative, which shows that the appellant was HIV negative for a period of 12 years (i.e., from July 2002 to March 2014).

36. It was further submitted that IMC Professional Conduct Regulations requires consent only for the purpose of surgical treatment, and blood transfusion not being a surgical treatment, consent of the appellant is not mandatory and at no point of time treatment was forced upon the appellant. It was further argued that Medical Boards are not the primary source of evidence in relation to the detection of HIV infection disease, and the test report dated 05.03.2014 must be considered as primary evidence.

37. Learned ASG further submitted that the appellant failed to show any connection between the transfusion of blood and HIV positive status of the appellant. It was argued that the findings of the Medical Board as to the disability of the appellant being attributed to service was solely for the purpose of granting disability pension and the same findings cannot be used to infer negligence on the part of the respondent authorities. Further, the CoI too, after examining all witnesses and their statements and evidence, observed that not

only the documents pertaining to blood transfusion and screening of blood were not available with the 171 MH but also observed that blood was properly screened prior to being transfused to the appellant.

38. It was further argued that the appellant failed to show any causation between the blood transfusion and his eventually being infected with the virus. There was a 'novus actus interveniens' that led to the appellant being infected with the HIV virus. To substantiate this, the ASG urged that even when the appellant was admitted to the hospital on 31.04.2002 (i.e., before blood transfusion), he showed symptoms of 'macrocytic anaemia' and even in February 2014, when he was admitted to the Military Hospital, Ahmedabad, symptoms of 'macrocytic anemia' were present.

Relying on research papers in the field³⁶, it was submitted that anemia is the most frequent and common abnormality associated with HIV, which the appellant had in 2002, even before he was admitted to the hospital for blood transfusion and thus, it cannot be ascertained with conviction that appellant acquired HIV due to blood transfusion and not from any other source.

39. It was further submitted that no adverse inference against the respondent can be drawn from the non-availability of the appellant's medical reports with the respondents as the same have been weeded out. Additionally, the respondents are not required to maintain the appellant's medical record beyond a period of three years as per IMC Professional Conduct Regulations and there is no obligation to preserve the said medical documents beyond this period specially when 171, Military Hospital itself is a temporary hospital. Regulation 1.3 of the IMC Professional Conduct Regulations reads as:

"Section 1.3 Maintenance of medical records:

1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3."

40. Learned counsel also placed reliance on communication dated 24.05.2016³⁷, wherein legal opinion of the case was provided by Command Judge Advocate (CJA). The opinion states that the appellant is wrong in blaming the organization for his divorce as the Family Court passed the divorce decree with the mutual consent of both the parties under Section 13B of the Hindu Marriage Act, 1955 and the same cannot be attributed to the respondent authorities.

41. Learned ASG further contended that the consumer complaint filed by the Complainant before the Commission is grossly time barred and he has failed to

demonstrate any sufficient cause for condoning the delay. Impugning the bonafides of the appellant, it was argued that he had discovered HIV infection in the year 2014 itself but approached the Commission only in 2017 and the appellant had symptoms of immunodeficiency during 2002 and 2014.

Yet he has attempted to conceal those facts at earlier stages. It was further argued that it was not possible for the appellant to remain asymptomatic for a period of 12 years after being infused with the virus specially when an infection is transmitted through blood transfusion as in such cases, viral load is greater and disease manifests comparatively early.

42. It was submitted that HIV can be caused because of various reasons, such as unprotected sexual intercourse with an HIV infected person; blood transfusion; sharing of HIV infected needles; transfer of HIV virus by infected mother to her baby before birth, or after birth, by breastfeeding. In the facts of this case, the appellant did not establish any definite causal relationship between infection in 2002 and his acquiring HIV positive status in 2014 as a direct and only result of his being admitted and given the blood transfusion in 171 MH.

The records reveal that the appellant was referred to 171 MH in 2002 as he was afflicted with microcytic anemia; loss of appetite, discoloration of urine, 5 kg weight loss in 5 months, fever and dyspepsia. When admitted in February 2014, at MH Ahmedabad, the appellant was suffering from conditions such as H1N1 virus (swine flu); macrocytic anemia; subhyalodid hemorrhage. The effect of transfusion in 2002 led to considerable improvement in the appellant's overall medical condition.

It was submitted that during the CoI, the concerned pathologist of 166 MH at the relevant time, produced records showing that two units of Bnegative blood were indented to 171 MH on 12.01.2002. No records showing blood units given to 171 MH for June- July 2002 were available. Therefore, at best, there was no evidence which could establish to any extent that HIV infected blood was transfused. In these circumstances, there is no question of negligence by the respondents or vicarious liability for their negligence of the IAF or the Indian Army.

VI. Analysis

(i) Jurisdiction

(a) Is appellant's case covered under CPA 1986:

43. The first question that the court has to consider is whether the appellant's case is under the CPA 1986. The respondents contend that the appellant cannot

claim to be a consumer, and the medical facilities extended to him, through the IAF and army hospitals, do not fall within the ambit of the CPA 1986, because all armed force personnel are required, as part of their duties, to show fitness, and are subjected to periodic mandatory medical tests.

The terms and conditions of engagement of armed forces personnel, and the army/IAF ecosystem are geared to ensure the fitness and sound medical shape of its personnel. Therefore, even the doctors and other personnel within the medical system are subjected to army/IAF discipline and rules and regulations. In these circumstances, Army hospitals and similar facilities cannot be considered as covered by CPA 1986.

44. It would be useful to extract the relevant regulation (applicable to Indian army personnel), which is contained in Regulation 173 of the Pension Regulations for the Army, 1973 (hereafter "Army Pension Regulations"):

"173. Primary Conditions for the grant of Disability Pension Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over."

45. Chapter III of the IAF Pension Regulations, 1961, applies to airmen, i.e., non-commissioned personnel and officers, such as the appellant, which spells out its application by Rule 101. Rule 111 renders all service, rendered up to the date of discharge of the airman, eligible for counting of pensionary service. Rule 153 reads as follows:

"153. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II" Appendix II deals with the principles to be applied for deciding disability.

46. In *Pani Ram vs. Union of India*³⁸, this court, while upsetting a decision of the Armed Forces Tribunal rejecting a claim for disability pension, for an army personnel, held, inter alia, on a reading of the Army Pension Regulations that:

"18. The perusal thereof will reveal that an individual who is invalided out of service on account of disability, which is attributable or aggravated by Military Service in non-battle casualty and is assessed 20% or more, would be entitled to disability pension. The Respondents are not in a position to point out any Rules

or Regulations, which can be said to be inconsistent with Regulation No. 292 or 173, neither has any other Regulation been pointed out, which deals with the terms and conditions of service of ETF."

Further, the court had remarked, poignantly that:

"23. As held by this Court, a Right to Equality guaranteed Under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract, however unfair, unreasonable and unconscionable a Clause in that contract or form or Rules may be.

We find that the said observations rightly apply to the facts of the present case. Can it be said that the mighty Union of India and an ordinary soldier, who having fought for the country and retired from Regular Army, seeking reemployment in the Territorial Army, have an equal bargaining power. We are therefore of the considered view that the reliance placed on the said document would also be of no assistance to the case of the Respondents."

47. Certain decisions of this court, in this regard, are illuminating. Savita Garg (Supra) dealt with this aspect, and referred to the previous ruling in Indian Medical Assn. v. V.P. Shantha (hereinafter, "V.P. Shantha")³⁹:

"This Court has dealt with all aspects of the medical profession from every angle and has come to the conclusion that the doctors or the institutes owe a duty to the patients and they cannot get away in case of lack of care to the patients. Their Lordships have gone to the extent that even if the doctors are rendering services free of charge to the patients in government hospitals, the provisions of the Consumer Protection Act will apply since the expenses of running the said hospitals are met by appropriation from the Consolidated Fund which is raised from taxes paid by the taxpayers. Their Lordships have dealt with the definition of "service" given in Section 2(1)(o) of the Consumer Protection Act, 1986, and have observed as follows:

"The services rendered free of charge to patients by doctors/hospitals, whether non-government or government, who render free service to poor patients but charge fees for services rendered to other patients would, even though it is free, not be excluded from definition of service in Section 2(1)(o). The Act seeks to protect the interests of consumers as a class. To hold otherwise would mean that the protection of the Act would be available to only those who can afford to pay and such protection would be denied to those who cannot so afford, though they are the people who need the protection more.

It is difficult to conceive that the legislature intended to achieve such a result. Another consequence of adopting a construction, which would restrict the protection of the Act to persons who can afford to pay for the services availed by them and deny such protection to those who are not in a position to pay for such services, would be that the standard and quality of services rendered at an establishment would cease to be uniform. It would be of a higher standard and of better quality for persons who are in a position to pay for such service while the standard and quality of such service would be inferior for persons who cannot afford to pay for such service and who avail the service without payment.

Such a consequence would defeat the object of the Act. All persons who avail the services by doctors and hospitals who give free service to poor patients but charge fee for others, are required to be treated on the same footing irrespective of the fact that some of them pay for the service and others avail the same free of charge. Most of the doctors and hospitals work on commercial lines and the expenses incurred for providing services free of charge to patients who are not in a position to bear the charges are met out of the income earned by such doctors and hospitals from services rendered to paying patients.

The government hospitals may not be commercial in that sense but on the overall consideration of the objectives and the scheme of the Act it would not be possible to treat the government hospitals differently. In such a situation the persons belonging to 'poor class' who are provided services free of charge are the beneficiaries of the service which is hired or availed of by the 'paying class'. Service rendered by the doctors and hospitals who render free service to poor patients and charge fees for others irrespective of the fact that part of the service is rendered free of charge, would nevertheless fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act."

48. Laxman Thamappa Kotgiri (supra) was a case where a railway employee was aggrieved by the negligent treatment of his wife, resulting in her death. His complaint was rejected, on the premise that the railway hospital where the treatment was given, was a part of his condition of service wherein he and his dependents were provided medical advice and treatment, free of charge. This court upset those findings and held the complaint maintainable:

"6. There is no dispute that the hospital in question has been set up for the purpose of granting medical treatment to the railway employees and their dependants. Apart from the nominal charges which are taken from such an employee, this facility is part of the service conditions of the railway employees. V.P. Shantha case [(1995) 6 SCC 651] has made a distinction between non governmental hospital/nursing home where no charge whatsoever was made from any person availing of the service and all patients are given free service

[vide para 55(6) at p. 681] and services rendered at government hospital/health centre/dispensary where no charge whatsoever is made from any person availing of the services and all patients are given free service [vide para 55(9)] on the one hand and service rendered to an employee and his family members by a medical practitioner or a hospital/nursing home which are given as part of the conditions of service to the employee and where the employer bears expenses of the medical treatment of the employee and his family members [para 55(12)] on the other. In the first two circumstances, it would not (sic) be free service within the definition of Section 2(1)(o) of the Act. In the third circumstance it would (sic not) be.

7. Since it is not in dispute that the medical treatment in the said hospital is given to employees like the appellant and his family members as part of the conditions of service of the appellant and that the hospital is run and subsidised by the appellant's employer, namely, the Union of India, the appellant's case would fall within the parameters laid down in para 55(12) of the judgment in V.P. Shantha case [(1995) 6 SCC 651] and not within the parameters of either para 55(6) or para 55(9) of the said case.

8. It is true that the decision in State of Orissa v. Divisional Manager, LIC [(1996) 8 SCC 655] relied upon by the learned counsel for the respondents appears to hold to the contrary. However, since the decision is that of a smaller Bench and the decision in V.P. Shantha [(1995) 6 SCC 651] case was rendered by a larger Bench, we are of the opinion that it is open to this Court to follow the larger Bench which we will accordingly do."

Even in the case of employees who had contributed in part, the other contributions being from employers, under the Employees State Insurance Corporation scheme, this court had held that the services rendered by ESI hospitals were not gratuitous and that the ESI doctors fell within the ambit of the CPA 1986, in Kishore Lal (supra):

"13. On a plain reading of the aforesaid provisions of the ESI Act, it is apparent that the Corporation is required to maintain and establish the hospitals and dispensaries and to provide medical and surgical services. Service rendered in the hospital to the insured person or his family members for medical treatment is not free, in the sense that the expense incurred for the service rendered in the hospital would be borne from the contributions made to the insurance scheme by the employer and the employee and, therefore, the principle enunciated in Conclusion (11) in para 55 in Indian Medical Assn. [(1995) 6 SCC 651] will squarely apply to the facts of the present case, where the appellant has availed the services under the insurance policy which is compulsory under the statute. Wherever the charges for medical treatment are borne under the insurance

policy, it would be a service rendered within the ambit of Section 2(1)(o) of the Consumer Protection Act. It cannot be said to be a free service rendered by the ESI hospital/dispensary.

14. The service rendered by the medical practitioners of hospitals/nursing homes run by ESI Corporation cannot be regarded as a service rendered free of charge. The person availing of such service under an insurance scheme of medical care, whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurer, such service would fall within the ambit of "service" as defined in Section 2(1)(o) of the Consumer Protection Act.

We are of the opinion that the service provided by the ESI hospital/dispensary falls within the ambit of "service" as defined in Section 2(1)(o) of the Consumer Protection Act. ESI scheme is an insurance scheme and it contributes for the service rendered by the ESI hospitals/dispensaries, of medical care in its hospitals/dispensaries, and as such service given in the ESI hospitals/dispensaries to a member of the Scheme or his family cannot be treated as gratuitous."

49. Section 1 (4) of CPA 1986, (which was in force when the appellant preferred his complaint) reads as follows:

"1. Short title, extent, commencement and applications:

(4) Save as otherwise expressly provided by the Central Government by notifications, this Act shall apply to all goods and services."

50. Earlier, keeping in line with the reasoning that furthered the objectives of the CPA 1986, spelt out in V.P. Shantha, this court had rejected, in Regional Provident Fund Commissioner v Shiv Kumar Joshi⁴⁰:

"We cannot accept the argument that the Regional Provident Fund Commissioner, being Central Government, cannot be held to be rendering "service" within the meaning and scheme of the Act. The Regional Provident Fund Commissioner, under the Act and the Scheme discharges statutory functions for running the Scheme. It has not, in any way, been delegated with the sovereign powers of the State so as to hold it as a Central Government, being not the authority rendering the "service" under the Act. The Commissioner is a separate and distinct entity. It cannot legally claim that the facilities provided by the "Scheme" were not "service" or that the benefits under the Scheme being provided were free of charge.

The definition of "consumer" under the Act includes not only the person who hires the "services" for consideration but also the beneficiary, for whose benefit

such services are hired. Even if it is held that administrative charges are paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the Scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiaries within the meaning of that word used in the definition of "consumer".

51. In *Haryana Urban Development Authority v Vidya Chetal*⁴¹, this court, speaking through a three-judge bench, held that:

"if the statutory authority, other than the core sovereign duties, is providing service, which is encompassed under the Act, then, unless any statute exempts, or provides for immunity, for deficiency in service, or specifically provides for an alternative forum, the consumer forums would continue to have the jurisdiction to deal with the same. We need to caution against over-inclusivity and the tribunals need to satisfy the ingredients under Consumer Protection Laws, before exercising the jurisdiction."

52. In the latest decision, *Joint Labour Commissioner v Kesar Lal*⁴², this court, dealt with the issue of whether a construction worker registered under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and a beneficiary of the scheme made under the rules framed under the enactment, is a 'consumer' within the meaning of Section 2(d) of the CPA 1986. The court rejected the statutory authority's appeal, after reviewing a host of precedents:

"14. [...] Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers. The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act 1986. The evolution of jurisprudence in relation to the enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case."

(b) Alternative basis for exercising jurisdiction:

53. There are several precedents of this court, which justify the exercise of jurisdiction under Article 32 of the Constitution. The most celebrated decision is

that of Nilabati Behara v State of Orissa⁴³, where the jurisdiction of the court was highlighted in the following terms:

"a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right.

The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

54. This court declared the importance of reaching out to injustice and using its powers, including under Article 142 of the Constitution, in the following terms, in Delhi Development Authority v. Skipper Construction Co. (P) Ltd⁴⁴:

"It is conceived to meet situations which cannot be effectively and appropriately tackled by the existing provisions of law. As a matter of fact, we think it advisable to leave this power undefined and uncatalogued so that it remains elastic enough to be moulded to suit the given situation. The very fact that this power is conferred only upon this Court, and on no one else, is itself an assurance that it will be used with due restraint and circumspection, keeping in view the ultimate object of doing complete justice between the parties."

Earlier, in Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani⁴⁵, this Court examined the development of the law of mandamus and held as under:

"[...] mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states:

'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.' (Judicial Review of

Administrative Action, 4th Edn., p. 540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment.

It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

This court, very aptly expressed, in the larger Bench decision, reported as P.S.R. Sadhanantham v. Arunachalam⁴⁶, the jurisdiction of the court, to entertain a criminal appeal by the informant, where the accused was acquitted, and no appeal had been entertained by the state (without any statutory basis or locus for such complainant/petitioner) alluding to considerations of justice:

"3. The jural reach and plural range of that judicial process to remove injustice in a given society is a sure index of the versatile genius of law-inaction as a delivery system of social justice. By this standard, our constitutional order vests in the summit Court of jurisdiction to do justice, at once omnipresent and omnipotent but controlled and guided by that refined yet flexible censor called judicial discretion. This nidus of power and process, which masterminds the broad observance throughout the Republic of justice according to law, is Article 136."

55. This court is conscious that if there are any statutory conditions or limitations, its exercise of Article 142 jurisdiction would have to weigh that in; further, the kind of relief to be given in any one case is entirely fact dependent and involves taking into account all relevant factors, subjective to the record in that case.

(c) Can the court consider questions of fact:

56. This aspect, i.e., the court's ability and jurisdiction to appreciate facts, really is uncontestable; even in writ proceedings, the so-called "hands off" bogey of "disputed questions of fact" which ordinarily constrain the courts, under Articles 32 and 226 from exercising jurisdiction, are to be seen in the context of the facts of each case.

No doubt, usually the courts would not primarily exercise jurisdiction to enter into the arena of disputed facts. Yet, on occasions, the court has underlined that such an approach is dictated by considerations of convenience, rather than a rigid rule calling for universal application. Therefore, in *Gunwant Kaur v Municipal Committee Bhatinda* (hereafter, "Gunwant Kaur")⁴⁷, this court held:

"The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit."

57. This court applied the ratio in *Gunwant Kaur, in ABL International Ltd. & Anr. V Export Credit Guarantee Corporation of India Ltd. & Ors.*⁴⁸:

"19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur [(1969) 3 SCC 769]* this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact"

The ratio of these decisions was also followed in *Unitech v Telangana State Industrial and Infrastructural Development Corporation*⁴⁹.

58. In the light of these decisions, this court holds that even if, *arguendo* for some reason, appellate jurisdiction is contested, this court deems that it would be unfair to drive the appellant to a fresh civil proceeding, particularly having regard to his vulnerability, and would instead, combine its power, drawing the source of its jurisdiction under Articles 32 and 142 of the Constitution, especially since the respondents are the armed forces and its authorities. The exercise of jurisdiction is legitimate and warranted, since the court has before it, all the factual material, supported by the affidavit of the parties.

(ii) Facts as appearing from the record

59. The blood transfusion in the present case, took place on 10.07.2002. The appellant was admitted to 171 MH on medical advice, in the third week of June 2002; after his transfusion, his overall condition improved; he was admitted as a case of anorexia with a low Hb count of Hb 6.3 % g; which improved on the date of his discharge (31-07-2002); he was found fit for discharge. When he felt discomfort, he was admitted to a Military Hospital Ahmedabad; the blood test did not indicate abnormality. Early, in the year 2014, he was admitted to the Military Hospital, Ahmedabad, on 14.03.2014 and diagnosed with "Acute

Gastroenteritis" and "Sceptic shock". The ultrasound report indicated "Hepatic disease".

The blood report did not indicate any abnormality, other than an unusual hemoglobin level (9.3g%). He was later required to report to INHS Ashvini, and declared fit for travel in the entitled class, on diagnosis of "Sepsis Secondary to Pneumonia" and "Azotemia" by medical advice issued by Military Hospital Ahmedabad, on 19.05.2014. He was admitted to the naval ship INHS Ashvini, when on 21.05.2014, he was detected for the first time, to be infected with Positive HIV-1 antibodies, as a result of the ELISA test. He was prescribed medication; he started taking treatment.

The medical board proceedings dated 11.06.2014 detected disability; however, it stated that the "disability is not attributable to service". The next medical board proceeding certificate dated 12.12.2014 described the appellant as suffering from a disability which was described as having been caused by "one unit of blood transfusion on 10.7.2002 in 171 MH." Against the column whether the disability was attributable to service, the certificate stated that "yes. One unit of blood transfusion on 10.7.2002 in 171 MH". By the medical board proceedings dated 24.06.2015, the cause of the appellant's condition was described as (Col. 17) which was caused by "one unit of blood-transfusion on 10 Jul 2002 in 171 MH".

The opinion of the Surgeon Commander dated 16.12.2015 was that the petitioner was a "39 years old serving air warrior is an old case of above-mentioned disability in LMC A4G4 (P) w.e.f 24 Jun 15 and due on 29 May 15. Individual reported. To SMC for 06 monthly review at INHS Asvini Release medical board. Individual was admitted and transferred to INHS Asvini for the opinion of Gastroenterologist. He was opined and recommended to be place in LMC P3 (p). Now individual reported back to SMC for holding Release medical board". Based on this, and the medical record, the opinion of the board dated 21.12.2015 was that "Disability developed due to one unit of blood transfusion on 10 Jul 2002, 171 MH.

Hence consider Attributable". The letter (dated 21.12.2015) indicated that the appellant was to be discharged on 31.05.2016. This assessment was accepted by the IAF, which approved his medical fitness category and also rated his disability percentage on 22 January 2016 (by Group Capt. N.T. Manikantan), the approving authority. The sanction of the disability element of the pension letter, dated 29.08.2017 (EX/741570 CPL Ashish Kumar Chauhan) issued by Air Headquarters described the disability element sanctioned by the discharge letter, based on the attributability found by the previous boards.

60. The learned ASG sought to attribute some sympathy, as the basis for maintaining that the disability was attributable to service. However, the conduct of the respondents points to entirely different facts. Initially, the respondents' endeavor was to deny access to relevant information altogether, to the appellant. His repeated RTI queries were turned down; for quite some time, he was also denied access to his medical records. The IAF does not appear to have communicated the discharge order, separately to him. No doubt, he refused to sign the medical board proceedings; however, there is nothing forthcoming on the record, to show that the IAF delivered the discharge order, on any particular date, or communicated it to him. The affidavits of IAF also do not disclose that there was ever any such communication.

61. In this background, it is significant to notice some facts and developments. The notice of the appellant's complaint was issued by the Commission/NCDRC on 20.06.2017. The documents placed on the record, demonstrate and establish that the CoI was constituted in response and an answer to the appellant's complaint. This is clear from the letter (No. B/76779/AK Chauhan/DGMS-5B/GC-75) dated 04.05.2018 written by the Directorate General Medical Service, (Army Adjutant Branch) to the HQ Western Command (Medical). After instructing the relevant officials to trace the documents necessary to prepare the counter affidavit, to the appellant's complaint, it was suggested that:

"In view of the above, it is requested to order a C of I under the aegis of your HQ for the following:

(a) to bring out the detailed facts pertaining to blood transfusion done at 171 MH in 2002

(b) To investigate and bring out the authority which provided the unit of blood and whether the same was duly screened as per the policy/guidelines in vogue at that time.

(c) to bring out all supporting documents pertaining to blood demand, blood transfusion and screening of blood along with SOP/guidelines in vogue at that time.

(d) to investigate into the matter and pin point the lapses or negligence if any and the individuals responsible thereto."

62. It was in these circumstances, that the CoI was constituted. It is an undisputed fact that though the appellant was the subject matter of that proceeding, none of the respondents cared to involve him or inform him about it. The proceedings scrupulously excluded him, despite the real likelihood of an

adverse consequence as the likely outcome. What is clearly discernable from the proceedings in the CoI therefore, is that:

(a) Many of the documents, pertaining to appellant's treatment were denied, and repeatedly the respondents denied access to him. However, many documents emerged- selectively, including the admission and discharge slips signed by the treating doctor (Lt. Col. Devika Bhat).

(b) The documents which respondents stated were missing, somehow were traced and produced during the CoI. These included extracts of registers, containing details of records destroyed; selective production makes the inquiry and its conclusions suspect to say the least.

(c) After categorically denying the existence of any records, somehow the respondents were able to retrieve them. These included a register containing details of the transfer of blood units from 166 MH to 171 MH.

(d) The deposition of Col. Nijhawan admitted that the responsibility of testing/screening blood for markers was that of 166 MH. He also admitted that there was no document to prove that the blood had been tested for markers. (Reply to Question 950). However, Lt. Col Devika Bhat asserted that the blood was "duly screened as per guidelines then in vogue: (Reply to Question No. 451).

(e) The deposition of Lt. Col. Jyoti Borpujari states that 171 MH was transferred one unit of B Negative blood on 12.01.2002; she further deposed that there was no other record of transfer of blood to 171 MH later, or during July 2002. She mentioned the relevant markers to test blood. However, she nowhere stated that such procedures were in fact used to test the blood actually transferred to 171 MH.

63. The final opinion of the CoI, based on the (allegedly scanty) documentary evidence presented to it, and the testimonies of Col. Sanjay Nijhawan, Lt. Col Devika Bhat, Lt. Col. Jyoti Borpurari (of 166 MH) is summarized as follows, in that document:

"As per the statements of Col. Sanjay Nijhawan, (171 MH) Lt. Col Devika Bhat, and Lt. Col. Jyoti Borpujari OIC Blood Bank 166 MH the following facts emerge:

(a) One unit of blood transfusion was given to 741 41570 B Ex-Cpl Ashish Kumar Chauhan, at 171 MH (Samba) in July 2002 for severe Macrocytic anaemia along with conservative treatment.

(b) No records are available at 171 MH pertaining to screening of blood for HIV, Blood demand and Blood transfusion during the period Jun-July 2002.

(c) No records are available at 166 MH regarding issue of blood during the period Jun-July 2002.

(d) An SOP for ad-hoc Blood Bank was promulgated at 171 MH (Samba) for Transfusion of blood during the 'OP PARAKRAM' as 171 MH was not authorised Blood bank /Pathologist during that period. As per SOP the Blood was screened for HIV infection at 166 MH and then issued to 171 MH Samba. 171 MH only stored the blood being issued for Transfusion.

(e) 74141570 B Ex-Cpl Ashish Kumar Chauhan contracted HIV in May, 2014 which may be for reasons other than blood transfusion."

64. These findings were accepted. However, those conclusions were not in fact acted upon: as is evidenced by the fact that the appellant's categorization as a person discharged on account of disability attributable to service, entitling him to pension has not been revoked or cancelled.

Now, as far as manifestation of the HIV positive condition is concerned, medical opinions, and those of organizations such as WHO appear to be unanimous that after the point of infection (known as Stage 1), the second phase (Stage 2) can be for a long period. At Stage 1 "the virus replicates using the body's CD4 T cells and spreads throughout the body. In doing so, it destroys CD4 T cells. Eventually, this process stabilizes. The immune system reduces the number of viral particles, and levels of CD4 T cells may rise. However, the number of these cells may not return to its original level."⁵²

The second stage is described as follows:

"After the acute stage has ended - and if the person has not received treatment - the virus remains active, reproducing at very low levels but continuing to damage immune cells. At this stage, there are usually no symptoms or very mild ones. This is why doctors sometimes call stage 2 "asymptomatic HIV infection" or "clinical latency." The virus can still pass to others during this stage, even if it causes no symptoms. Without treatment, this stage can last for 10 years or more before the person develops stage 3 HIV."

65. The Guidelines on HIV Testing issued by Central Government⁵³, the Union Ministry of Health and Family Welfare, National Aids Control Organization (NACO), March 2007 similarly describes the second phase as the "latent phase" and "the asymptomatic stage", a "period on average lasts for 8-10 years." According to those guidelines, the long-term survival of most afflicted persons

(80-90%) was 10 years or more, and a small percentage (5%) "do not experience clinical progression of HIV." Such persons are described as "long term nonprogressors (LTNPs)".

The respondents strongly relied on the Ministry of Defence's Guide to Military Officers (Military Pensions), 2008, which contained a tabular chart (in Appendix to Chapter VI titled "INCUBATION PERIODS IN RESPECT OF CERTAIN INFECTIOUS DISEASES"). Against the column containing HIV, the initial "usual incubation period" was described to be 4 to 6 weeks. The "minimum and maximum period for deciding attributability" against HIV was "1 year".

In this court's opinion, the guide, issued by the Ministry of Defence cannot be conclusive; as it does not show, what was the basis for the maximum attribution period of one year; and on the other hand, the prevailing guidelines of the national expert body indicated entirely different, and nuanced seroprevalence periods, for different kind of individuals. Therefore, this court holds that such a guide to military officers cannot be accepted, at least in this case, to reject the petitioner's claim.

66. A review of the evidence and the materials on record reveals that the appellant was transfused with one unit of blood on 10 July 2002, at the advice of Lt. Col. Devika Bhat, who also deposed during the CoI proceedings. There is no indication in her deposition that the appellant was informed of the likely consequences- or even reasonable likelihood or the possibility of contamination or infection due to the transfusion.

Likewise, he was not informed about any potential risks. By all accounts, the appellant really had no choice because the transfusion took place under medical advice. At some stage, the respondents argued that if the appellant so wished, he could have opted not to go in for transfusion. That is, in the realm of theory, no such alternative option is shown to have been made available to him, when in fact the transfusion did take place.

(iii) The law on negligence

67. In India, medical negligence is said to have been established by an aggrieved plaintiff or complainant when it is shown that the doctor or medical professional was in want of, or did not fulfil the standard of care required of her or him, as such professional, reasonably skilled with the science available at the relevant time. In other words, a doctor is not negligent if what he has done would be endorsed by a responsible body of medical opinion in the relevant speciality at the material time.

This test is known as the Bolam test⁵⁴ and has gained widespread acceptance and application in Indian jurisprudence. It finds resonance in several decisions. Recently, in *Arun Kumar Mangalik v Chirayu Health and Medicare Ltd.*⁵⁵, this court outlined that though Bolam has been the bulwark principle in deciding medical (and professional negligence) cases, it must adapt and be in tune with the pronouncements relating to Article 21 of the Constitution and the right to health in general:

"41. Our law must take into account advances in medical science and ensure that a patient-centric approach is adopted. The standard of care as enunciated in the Bolam case must evolve in consonance with its subsequent interpretation by English and Indian Courts. [..]"

68. In United Kingdom itself, the duty of care has evolved beyond the Bolam approach; in *Sidaway v Board of Governors of the Bethlem Royal Hospital & the Maudsley Hospital*⁵⁶ and more significantly, in *Montgomery v Lanarkshire Health Board*⁵⁷ (the latter decision drawing upon the reasoning of the Australian High Court in *Rogers v Whittaker*⁵⁸), the UK Supreme Court outlined the duty of a doctor, surgeon or physician, and address the right of a patient as follows:

"An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it."

69. In the present case, what was the duty of care of the treating professional? Whilst this court cannot be oblivious of the fact that the times during which the incident occurred were fraught in the sense that a warlike situation prevailed at the border, at the same time, it cannot also ignore, or be blind to certain realities. These are firstly that nothing was shown on the record to establish that 171 MH was licensed, even as an ad hoc blood bank.

Secondly, there is no material on record as to whether the nature of equipment available at 171 MH for storing blood and blood products was in accordance with the standards and guidelines prevailing then, in 2002. Thirdly, during the testimony of witnesses i.e., before the CoI, 171 MH and 166 MH, there was no

specific mention about what kind of markers were used to determine whether the transfused blood was in fact safe.

Fourthly, apart from mentioning of the guidelines by the concerned doctors, there is nothing on record to show that such guidelines were, in fact, adhered to when the testing as well as the transfusion took place. Fifthly, there is no evidence in the form of deposition by the officer in charge of 166 MH, Lt Col Jyoti Borpujari to rule out the possibility of contaminated blood-which was in fact sent to 171 MH had taken place.

70. In the opinion of this court, all the above, cumulatively point to the rather casual and if one may say so, superficial attention paid to the entire episode involving blood transfusion. It is a matter of record that the concerned doctors who were professionals, i.e., either at 171 MH or 166 MH, felt so pressured by the absolute necessity to follow the drills that the safeguards preceding safe transfusion to the appellant appears to have been a given a go by, or dispensed with.

In these circumstances, the normal duty of care which would have ordinarily applied and did apply as well, was that at both ends i.e., 166 MH and 171 MH, there should have been no doubt that blood had been filtered and found safe for transfusion. Equally, something in the form of other material on record or in the form of the oral testimony by the medical cadre personnel, such as Lt Col Devika Bhat of 171 MH who was present in 2002 or Col Sanjay Chauhan, to show what kind of equipment such as refrigerating unit or other chemical matter to preserve the blood and blood products, even within the safe.

When constituted or read together, all these lapses-which may be seen singly as small or minuscule, add up to one thing: lack of adherence to or breach of the relevant standards of care reasonably expected from a medical establishment. Therefore, whilst pinpointed accountability of one or some individuals is not possible, nevertheless the systemic failure in ensuring a safe transfusion of blood to the appellant, is the only irresistible inference. These facts establish medical negligence, and therefore, vicarious liability on the part of the IAF and the Indian Army. The former is the appellant's immediate employer; the latter was the organization controlling and in charge of 166 MH and 177 MH.

71. The principle of *res ipsa loquitur* has been described in *Charlesworth & Percy on Negligence*⁵⁹ in the following terms:

"6-25. It has been said that "a prima facie case" should be the preferred terminology. It means essentially a case which calls for some answer from the defendant and will arise upon proof of: (1) the happening of some unexplained

occurrence; (2) which would not have happened in the ordinary course of things without negligence on the part of somebody other than the claimant; and (3) the circumstances point to the negligence in question being that of the defendant, rather than that of any other person"

6-26 The third requirement is usually fulfilled by showing that the instrument causing the damage was in the management and control of the defendant at the time of the occurrence, but this is not essential. Where an object which causes an accident has, at all material times, been under the control of the defendants and there is no evidence to show how the accident happened, the presumption of negligence cannot be displaced by evidence of the general care that has been taken."

This court has, on several occasions in the past, particularly in cases involving allegations of medical negligence, invoked the principle of *res ipsa loquitur* ("the thing speaks for itself"). In *V. Kishan Rao v Nikhil Super Speciality Hospital & Anr.*⁶⁰, it was observed:

"In a case where negligence is evident, the principle of *res ipsa loquitur* operates and the complainant does not have to prove anything as the thing (*res*) proves itself. In such a case it is for the respondent to prove that he has taken care and done his duty to repel the charge of negligence."

72. All these facts and circumstances, in the opinion of this court, prove and establish that by reasonable standards of evidence, the appellant has justified the invocation of the principle of *res ipsa loquitur*. The principle was applied in the *Nizam Institute of Medical Sciences* (*supra*) wherein this court held that:

"77. [...] in a case involving medical negligence, once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence."

Earlier, in *Savita Garg* (*supra*), the court had ruled that once the complainant or aggrieved party had adduced some evidence that the patient suffered (or died, as in that case) due to lack of care (or as in this case, suffered irremediable injury due to want of diligence) "then the burden lies on the hospital to justify that there was no negligence on the part of the treating doctor or hospital. Therefore, in any case, the hospital is in a better position to disclose what care was taken [...]."

73. At the same time, this court has cautioned that *res ipsa loquitur* cannot be the only basis to fasten liability. This view has been advocated (and applied) in

Martin F. D'Souza (supra) and Bombay Hospital and Medical Research Centre v Asha Jaiswal (hereafter, "Asha Jaiswal")⁶¹. In Asha Jaiswal (supra), this court outlined the caution needed to apply *res ipsa loquitur*:

"an application of the general method of inferring one or more facts in issue from circumstances proved in evidence". In this view, the maxim *res ipsa loquitur* does not require the raising of any presumption of law which must shift the onus on the defendant. It only, when applied appropriately, allows the drawing of a permissive inference of fact, as distinguished from a mandatory presumption properly so-called, having regard to the totality of the circumstances and probabilities of the case. *Res ipsa* is only a means of estimating logical probability from the circumstances of the accident."

The above analysis leads this court to the conclusion that the condition in which the appellant found himself, was the direct consequence of the two hospital-establishments and their breach of the standards of care, resulting in the transfusion of the HIV positive infected blood into the appellant, which was the causative factor. The necessary foundational facts, to hold that the application of *res ipsa loquitur* was warranted, were proved in all detail.

The respondents failed to discharge the onus which fell upon them, to establish that due care was in fact exercised and all necessary care standards, applicable at the time, were complied with. As a result, it is held that the respondents are liable to compensate the appellant for the injuries suffered by him, that are to be reckoned in monetary terms.

(iv) The relief of damages

74. Medical negligence, or negligence is tied to two concepts. At the one end is the duty of care - and establishing its breach, and thereby fault - and resultant injury. At the other end is remedial - usually restitution, in monetary terms, by payment of damages. The ingenuity of common law has been to adapt - and evolve, through refinement, and reinvention, the idea of duty to care.

In the case of medical professionals, or other professionals, for instance, their duty to care not only involves the professionals' assessment of the suitability of treatment, or use of technology, but the concomitant duty to inform the patient (or consumer) of the likely results, or even the risk(s) because the service recipient, so to say, has to bear the consequent consequences. Damages, in theory, can have no limit. Yet, the duty of care is woven with the idea of causation or proximity. Thus, only one is liable in law to the extent of one's actions, which cause the injury. Equally, damages are limited to consequences which are reasonably foreseeable.

75. The judgment in *Raj Kumar v. Ajay Kumar*⁶² had discussed and declared the general principles relevant for the assessment of compensation or damages for personal injuries. These principles have been applied, in cases involving claims under the Motor Vehicles Act, 1988 as well as other cases, including medical negligence cases. The court observed:

"The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury.

This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See *C.K. Subramania Iyer v. T. Kunhikuttan Nair* (1969) 3 SCC 64, *R.D. Hattangadi v. Pest Control (India) (P) Ltd.* (1995) 1 SCC 551 and *Baker v. Willoughby* (1969) 3 All ER 1528 (HL)].

6. The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses. Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and

(iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

76. The principles discussed and commended for general application have endured and have been consistently followed by this court, in calculating and awarding damages.

77. This court, in Nizam Institute of Medical Sciences (supra), outlined, briefly, what damages a person who has suffered due to medical negligence, can be awarded. This court held that:

"92 [...] The kind of damage that the complainant has suffered, the expenditure that he has incurred and is likely to incur in the future and the possibility that his rise in his chosen field would now be restricted, are matters which cannot be taken care of under the multiplier method."

78. The court had emphasized on the applicability of the cumulative effect upon the patient, of the medical negligence, in the decision reported as Malay Kumar Ganguly v Dr. Sukumar Mukherjee (hereafter "Malay Kumar Ganguly")⁶³ and held that negligence of each treating contributory fact resulting in the patient's condition, has to be seen:

"in a case of this nature, the court must deal with the consequences the patient faced, keeping in view the cumulative effect." Malay Kumar Ganguly (supra) is also an authority for the reasoning that while awarding compensation, the court should consider "loss of earning or profit up to the date of trial" including any loss "already suffered or is likely to be suffered in future". Recently, in Sidram v Divisional Manager⁶⁴, this court underlined the rationale for just compensation:

"32. This Court has emphasised time and again that "just compensation" should include all elements that would go to place the victim in as near a position as she or he was in, before the occurrence of the accident. Whilst no amount of money or other material compensation can erase the trauma, pain and suffering that a victim undergoes after a serious accident, (or replace the loss of a loved one), monetary compensation is the manner known to law, whereby society assures some measure of restitution to those who survive, and the victims who have to face their lives."

In K. Suresh v. New India Assurance Co. Ltd.⁶⁵, this court observed that:

"10. It is noteworthy to state that an adjudicating authority, while determining the quantum of compensation, has to keep in view the sufferings of the injured person which would include his inability to lead a full life, his incapacity to enjoy the normal amenities which he would have enjoyed but for the injuries and his ability to earn as much as he used to earn or could have earned. Hence, while computing compensation the approach of the Tribunal or a court has to be broad-based. Needless to say, it would involve some guesswork as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determination of compensation the fundamental criterion of "just compensation" should be inhaled."

79. Recently, in *Abhimanyu Partap Singh v. Namita Sekhon & Anr.*,⁶⁶ this court held that:

"compensation can be assessed in pecuniary heads i.e. the loss of future earning, medical expenses including future medical expenses, attendant charges and also in the head of transportation including future transportation. In the non-pecuniary heads, the compensation can be computed for the mental and physical pain and sufferings in the present and in future, loss of amenities of life including loss of marital bliss, loss of expectancy in life, inconvenience, hardship, discomfort, disappointment, frustration, mental agony in life, etc."

80. The appellant has claimed a total sum of ₹ 95,03,00,000/- (Rupees ninetyfive crores, three lakhs only), under various heads:

(i) ₹1.5 crores as travelling expenses, for his treatment, incurred- every month from his house to New Delhi, (ii) ₹ 50 lakhs as the expenses for his medicines, (iii) ₹ 1.53 crores for loss of salary, from the date of his retirement due to not giving extension till the age of superannuation, (iv) ₹1.5 crores as medical - expenses which he is required to incur due to the non-availability of medical services and an immunologist at his home town, (v) ₹10 crores for violation of his human rights, ₹ 40 crores for mental and social agony, and ₹40 crores for his defamation.

(ii) The total salary claimed per annum was ₹ 10,89,052 / - (i.e. ₹ 89,921/- per month multiplied by twelve months); to the total salary for the "leftover period of service from 31 May, 2016 to 31 May 2033.)" calculated @ ₹ 5,44,526/-; plus a sum of ₹ 10,89,052 multiplied by 12 (number of years left, till the age of 58 years) ₹ 2,80,97,541.60, added to which the appellant claims a factor of 1.6 (for future prospects). The total thus worked out is ₹ 50,57,55,748.80.

81. The appellant's claim of ₹ 89,921/- per month, is based on the calculation that he would have earned, had he been in service if the seventh pay commission

pay fixation and adjustment were provided. However, he was discharged from service on 31.05.2016. He claimed, in addition, a host of allowances (dearness allowance, family assistance, house rent allowance, good conduct allowance, etc.). No doubt these factors have to be considered when loss of earnings or income is to be calculated. However, all allowances cannot be granted, towards loss of earnings.

This court is cognizant of the fact that the appellant has also been drawing pension (including disability pension which is now in the range of about ₹ 6000/- per month). Even if the appellant's calculation about loss of future earnings were to be taken into account, given that he has been a pensioner, for the past 7 years, adjustment of the base compensation figure for compensation for loss of earnings has to be given.

Therefore, taking a conservative consolidated figure of ₹ 65,000/- per month, if the average pension earned is pegged @ ₹ 25,000/- per month, the total figure he would be entitled towards loss of earning, for seven years, would be about ₹ 33,60,000/-. The figure could be rounded off, appropriately, to ₹ 35,00,000/-. The court would then, have to take into account, the appellant's age, as of date, which is 47 years. Again, if a multiplier of 12 is applied to determine compensation for loss of future income, including adding 40% towards loss of future prospects, the figure would be ₹ 80,64,000/-.

The total amount, (i.e., ₹ 35,00,000/- plus ₹ 80,64,000/-) would be ₹ 1,15,64,000/- (Rupees one crore fifteen lakhs sixty four thousand only). Of this, a deduction for the expenses of the appellant, calculated @ 25% would have to be made. The figure to be deducted would be ₹ 28,91,000/-. The total amount, towards loss of earnings, including future earnings, would then be ₹ 86,73,000/- (Rupees eighty six lakhs seventy three thousand only). Mental agony

82. This court has repeatedly emphasized that mental agony is an important factor to be taken into account while calculating compensation. In the present case, there are multiple facts, which in the opinion of this court, establish that the appellant suffered from callousness and insensitivity of the respondents, who persisted in being in denial. These may be briefly set out:

a. Firstly, the appellant received the biggest jolt, when he was informed that he was an HIV positive infected person, in May, 2014. The subsequent tests and certifications were mere palliatives. The respondents' effort was to somehow get rid of his services, which they did with effect from 31.05.2016.

b. Secondly, the appellant was virtually stonewalled in his efforts to secure documents, and information; most of his queries under the Right to Information Act (RTI) were turned down; he had to go in appeals.

c. Even the appellate authority 171 Military Hospital stated in its letter (dated 12.06.2018) "is not authorized any Blood Bank and hence no Pathologist is authorized nor posted, at any time. However, an ad-hoc blood bank was established during 'Op Parakram' i.e. in 2002. Blood would be requisitioned from 166 MH and stored at 171 MH."

d. A tabular chart, showing the appellant's queries, and their outcome, with relevant particulars, is reproduced below, based on the admitted documents placed on record:

S. No.	RTI Filing Date	RTI Reply Date	Contents of Reply
1.	30.12.2016	18.01.2017	RTI was filed by the appellant on 30.12.2016 seeking confirmation regarding availability of immunologist empaneled with ECHS Polyclinic Ajmer and by response dated 18 Jan 2017, it was confirmed that no immunologist is available in hospital at Ajmer which is empanelled with ECHS Polyclinic Ajmer.
2.	14.01.2017	20.02.2017	RTI filed by appellant regarding allotment of service quarter/married accommodation and the IAF replied, in the reply to the appellant's RTI query, that service quarter/married accommodation was allotted to a married air-warrior to live out with his family after registration for married accommodation by the respective individual and brought within authorized married establishment as per seniority in waiting list. It was further stated in reply that diagnosis and treatment mentioned against "patient must be duly signed by CMO of concerned Government Hospital".
3.	14.02.2017	14.03.2017	It was stated that in the RTI reply that the information sought is 'interrogatory in nature' and does not fall within the definition of "information". It was admitted by HQ South Western Air Command, IAF, Gandhinagar that "Medical facility is the part of service conditions of the Indian Air Force for Air

			warriors."
4.	05.05.2017	13.07.2017	RTI application filed on 05.05.2017 seeking for copies of the appellant's willingness certificate for blood transfusion at the 171 MH facility and whether the treating doctor informed the appellant about the risks associated with the blood transfusion. The reply was that no such records are available with the hospital as same fell under exemption under Section 8(1) of the RTI Act, 2005 and the respective records were forwarded to respective records office after discharge from the hospital.
5.	18.06.2017	18.08.2017	An RTI was filed on 18 Jun 2017 wherein amongst other things, appellant asked for maximum age an airman can serve in IAF and when will seventh pay commission be effective from. It was replied by reply dated 18.08.2017 that revised 7th pay commission is effective from 01.01.2016 and maximum age airman can serve in IAF is 57 yrs. (subject to extension on meeting eligibility criteria and service exigencies).
6.	03.07.2017	11.07.2017	RTI application also filed on 03.07.2017 by the appellant to Ministry of Finance, Department of Economic affairs seeking details about the ongoing inflation rate as per the Consumer price index for the financial year 2014-15 and response was provided for the same vide letter dated 11.07.2017.
7.	02.12.2017	04.01.2018	BH, Delhi Cantt -10 replied that no Immunologist is posted at BH, Delhi Cantt-10. However, doctors were available who could treat HIV/AIDS patient at BH, Delhi Cantt-10.
8.	26.10.2018	05.12.2018	RTI by the appellant on 26.10.2018 to CPIO, Indian Army regarding his blood group and RH Factor Test report in respect of blood transfusion at the 171 Military facility in 2002, and by reply dated 05.12.2018 the respondent admitted that Blood Group and RH Factor Test Report of appellant in respect to Blood transfusion was NOT available.
9.	22.04.2019	Date	On 22.04.2019, another RTI application by the

		unclear	Appellant requesting for medical records in respect of the medical board proceedings dated 12.12.2014 and any correspondence between the IAF and the Registry of the military facility at MH 171 and the reply (undated) stated that that no such information was available.
10.	27.04.2019	Date Unclear	RTI application dated 27.04.2019 to CPIO Food Corporation of India wherein he asked for reasons for exclusion of HIV category patients from the category of Persons with Disability and reference was made to a reply letter dated 29.05.2018. It was admitted by the Food Corporation that HIV disease/ HIV positive applicants were not considered in category of Persons with disability and in the Online Application Form. No option was available there to disclose the HIV positive status of the appellant.
11.	17.05.2019	21.05.2019	RTI application dated 17.05.2019 filed by appellant asking for copy of correspondence between 171 MH facility and Senior Medical Officer, SMC, HQ, SWAC (U) Gandhinagar in 2014 regarding medical board proceeding dated 12.12.2014, and by reply, it was informed that no such correspondence existed.
12.	18.07.2019	16.08.2018	On 18 July 2019, Appellant filed RTI application for written correspondence between Air Force and Registrar at 171 MH Medical facility in respect of his letter dated 21 Jul 2014 and 16 Sep 2014. By letter dated 16.08.2018, he was informed that no such correspondence in respect of the above stated letter was exchanged between the IAF and the Registrar of the military facility (i.e., MH 171).
13.	27.06.2019	03.07.2019	RTI filed on 27th June 2019 seeking for details of availability of transfusion medicine expert at the 171 MH Military facility and vide reply letter dated 03.07.2019, it was admitted by the first respondent that no such transfusion medicine expert (doctor) was available and no blood grouping & Cross matching test report is available at the said 171 Military hospital

			facility.
14.	13.05.2022	23.05.2022	RTI application filed on 13.05.2022 by the appellant to 171 Military Hospital requesting for the medical records pertaining to transfusion of blood on 10.07.2002 and information relating to source of the donor and vide reply dated 23.05.2022. The appellant was informed that no such information is available with the respondents' without assigning any reasons for same.
15.	31.07.2022	11.08.2022	Another RTI dated 31.07.2022 filed by appellant to ECHS Cell, Station headquarters, Ajmer asking for his eligibility to become ECHS (Ex- Service Contributory Health Scheme) and it was replied vide letter dated 11.08.2022 that no provision exist by which Appellant can become member of ECHS prior to retirement which falls on 31.05.2016, and even after retirement, Appellant had to register himself to become a member of the ECHS and it was never mentioned in office letter dated 25.07.2022 that he had become member of ECHS from his date of retirement i.e. on 31 May 2016.
16.	(Unclear)	06.05.2022	Another RTI was filed by the Appellant where appellant asked for information to be provided to him about name of laboratory test through which he is likely to be infected with virus. AIIMS vide letter dated 06.05.2022, while referring to NACO Guidelines for HIV testing, 2015, stated that "none of the diagnostics modalities can ascertain or dig out the cause of action for HIV virus that later became HIV positive".
17.	24.07.2022	11.08.2022	RTI application dated 24 Jul 2022 filed by the appellant asking if any circular/letter/memorandum/order exists which exempts defense personnels from complying with NACO circular and guidelines to which it was responded vide letter dated 11 Aug 2022 that no such circular/order/memorandum/letter exists.

18.	23.10.2022	24.11.2022	RTI application dated 23.10.2022 (received by Base Hospital, Delhi Cantt-10 on 01.11.2022) filed by Appellant u/s 7(1) of RTI Act (which further provides that when an information concerns life or liberty of a person, same information shall be provided within 48 hrs of receipt of the request). Amongst other thing), he has asked whether the hospital lab has facility for CD-4 counts. Hospital replied that though they have facility for laboratory test for HIV RNA for HIV defense personnel, however lab does not have facility for CD 4 counts. (In their reply, they also mentioned that provisions of section 7(1) of RTI Act should not have been invoked by the Appellant as no imminent danger to life or liberty was demonstrably proven by Appellant in case information is not supplied within 48 hrs.)
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e. The same appellate authority's order clearly went beyond its remit, and as discussed earlier, went on to highlight entirely external factors, such as the appellant's alleged marital discord; it even mentioned the name of his spouse.

f. Once the appellant approached the Commission, and notice was issued, in 2017, the respondents decided that the issue had to somehow be dealt with; by orders issued in May 2018, after notice was received, and when the reply was being planned, the CoI was constituted.

g. The CoI did not involve the appellant at all; the entire effort was to somehow see how the respondents could absolve themselves from liability.

83. This court has, in the past, highlighted that the head of mental agony has to be assessed and granted while awarding compensation (Ref. Spring Meadows; V. Krishna Kumar v State of Tamil Nadu⁶⁷). In the latter case, the High Court had awarded damages, upon a finding of negligence on account of lack of care due to blood transfusion to the baby at the time of her premature birth, which led to a medical condition, i.e., progressive retinal disease. The court not only granted damages under the head of mental agony, but also towards past medical expenses, and future medical expenses, after factoring an annual inflation rate of 1% per annum. The total sum awarded was ₹1.38 crores.

84. In the present case, the shock and agony faced by the appellant, the trauma which he felt because of the virtual denial of his condition, the stonewalling

attempts of the respondents, in firstly denying his requests for information, and then, holding a CoI behind his back, are actionable. Whilst individuals' roles cannot be pinpointed, the overall inference one is left to draw is overwhelming prejudice- despite the appellant's unblemished track record of service in the IAF.

The premature retirement, and to cap it all (in an incident for which the respondents cannot be held responsible) his rejection by a public sector company, the Food Corporation of India (FCI) on the ground of his being HIV positive are aggravated factors. The IAF could certainly have taken pro-active steps to ensure that the appellant was provided with some alternative employment, within its organization, or as part of the armed forces' rehabilitation programmes for veterans and ex-servicemen. The overall result was acute mental agony caused to the appellant. This court is of the opinion, that the appellant is entitled to ₹ 50,00,000/- (Rupees fifty lakhs only) towards this head.

85. The appellant had highlighted how his attempt to secure employment elsewhere has been thwarted and relied upon the correspondence with FCI. The respondents cannot be fastened with liability on that score, however, at the same time, it would be relevant to highlight that Parliament has enacted the HIV and AIDS (Prevention and Control) Act, 2017 (hereafter, "HIV Act") which protects and promotes the rights of persons affected by HIV and AIDS. The Act came into force on September 10, 2018. Its objectives are the prevention and control of the spread of HIV and AIDS and the reinforcement of legal and human rights of HIV infected persons and those affected by AIDS. It protects the rights of healthcare providers as well.

86. The HIV Act addresses stigma and discrimination⁶⁸ (Section 3); and aims at the creation of an environment enabling or enhancing access to services. Section 5 of the HIV Act elaborately imposes obligations upon persons to seek informed consent of concerned persons, before HIV related testing or procedures are undertaken, and before any line of medical treatment is to be given.

Other provisions enabling access to diagnostic facilities related to Anti-Retroviral Therapy (ART) and opportunistic infection management for people living with HIV and AIDS have been made. Further, the HIV Act provides for a grievance redressal mechanism in the form of an Ombudsman at the state level and a Complaints Officer at the establishment level for providing speedy redressal. Section 34 of the HIV Act imposes obligations upon courts to anonymise the name of the individual concerned affected by HIV positive or AIDS, and also expedite legal proceedings.

87. This court is conscious of the fact that the provisions of the HIV Act cannot be applied to the facts of this case. Yet, it enacts standards and imposes obligations upon several authorities, including the justice delivery system, to take specified measures to ease and mitigate the hardships and barriers which HIV or AIDS affected persons, would ordinarily face. In the light of its provisions, this court proposes its effective implementation, through operative directions to be issued hereafter.

Future care

88. The HIV positive condition is such that it can lead to slow and debilitating results. The steady weakening and degenerative form of the condition has been described as follows⁶⁹:

"Acute infection

An HIV-positive person may not have many serious symptoms during this stage, but there are usually large quantities of virus in their blood as the virus reproduces rapidly. Acute symptoms can include: (a) fever (b) chills (c) night sweats (d) diarrhea; (e) headache (f) muscle aches (g) joint pain (h) sore throat (i) rash (j) swollen lymph nodes (k) mouth or genital ulcers

Chronic HIV infection

The next stage is called the chronic infection stage. It can last for as long as 10 to 15 years. An HIV-positive person may or may not show signs or have symptoms during this stage. As the virus advances, the CD4 count decreases more drastically. This can lead to symptoms such as: fatigue; shortness of breath; cough; fever; swollen lymph nodes; weight loss; diarrhea; rash.

AIDS

If untreated HIV advances to AIDS, the body becomes prone to opportunistic infections. AIDS increases a person's risk for many infections, including a herpes virus called cytomegalovirus (CMV). It can cause problems with the eyes, lungs, and digestive tract. Kaposi sarcoma, another possible complication, is a cancer of the blood vessel walls. It's rare among the general population, but it's more common in people with advanced HIV. Symptoms include red or dark purple lesions on the mouth and skin. It can also cause problems in the lungs, the digestive tract, and other internal organs. HIV and AIDS also put a person at higher risk for developing lymphomas. An early sign of lymphoma is swollen lymph nodes.

Respiratory and cardiovascular systems HIV makes it hard to fight off respiratory problems such as the common cold and flu. In turn, an HIV-positive

person may develop related infections, such as pneumonia Without treatment for HIV, advanced disease puts an HIV-positive person at an even greater risk for infectious complications, such as tuberculosis and a fungal infection called pneumocystis jiroveci pneumonia (PJP). PJP causes trouble breathing, cough, and fever. The risk of lung cancer also increases with HIV. This is due to weakened lungs from numerous respiratory issues related to a weakened immune system.

According to available research, lung cancer is more prevalent among people with HIV compared to people without it.

People with HIV are more likely to develop high blood pressure. HIV also raises the risk of pulmonary arterial hypertension (PAH). PAH is a type of high blood pressure in the arteries that supply blood to the lungs. Over time, PAH will strain the heart and can lead to heart failure.

If a person has HIV with a low CD4 count, they're also more susceptible to tuberculosis (TB).

TB is an airborne bacterium that affects the lungs. It's a leading cause of death in people who have AIDS. Symptoms include chest pain and a bad cough that may contain blood or phlegm. The cough can linger for months."

89. In the present case, the appellant was diagnosed HIV positive, and immediately placed under ART which continues till date. His immune system has gone down, due to the untreated condition, for some undetermined time. He complains of reduced mobility; the IAF itself has characterised his disability, though assigned it a figure of 30% disability; that was, however, sufficient for them to dispense with his service. As time progresses, he would need the assistance of a helper. Even conservatively calculated, such a helper would have to be paid about ₹ 10,000/- to ₹ 15, 000/- per month. If a calculation of average of ₹ 10,000/- to ₹ 15,000/- (i.e., ₹ 12,500/-) for twelve years is taken into account, the total sum would be ₹ 18,00,000/- (Rupees eighteen lakhs only).

Future medical care

90. The respondents, through the available medical facilities, have till date provided medical assistance. Repeatedly during the hearing, the appellant had been complaining of obstruction and delay, and denial of his requests. The court had intervened. Oftentimes, the appellant - perhaps due to his condition, and repeated feeling of exclusion, might have overreacted. Yet, it is undeniable that the respondents owe a duty to ensure that the appellant's requests are met in a compassionate and timely manner.

To avoid any future friction, this court hereby directs the respondents to extend fullest co-operation to the appellant, in regard to his future medical treatment. Furthermore, the appellant shall be entitled to bimonthly medical check-ups at the relevant departments, in the Research and Referral Centre (R&R) in New Delhi; for that purpose, the respondents shall ensure that the necessary travel expenses, in accordance with the appellant's entitlement are disbursed. It is also clarified that the appellant should fill out whatever forms are necessary for the timely disbursement of his pension, and entitlement, on a monthly basis.

91. Before issuing concluding directions, this court would like to record some relevant observations. People sign up to join the armed forces with considerable enthusiasm and a sense of patriotic duty. This entails a conscious decision to put their lives on the line and be prepared for the ultimate sacrifice of their lives. A corresponding duty is cast upon all state functionaries, including echelons of power within the armed forces to ensure that the highest standards of safety (physical/mental wellbeing, medical fitness as well as wellness) are maintained.

This is absolutely the minimum required of the military/air force employer for not only assuring the morale of the forces but also showing the sense of how such personnel matter and their lives count, which reinforces their commitment and confidence. Any flagging from these standards - as the multiple instances in the present case have established, only entails a loss of confidence in the personnel, undermines their morale and injects a sense of bitterness and despair not only to the individual concerned but to the entire force, leaving a sense of injustice.

When a young person, from either sex (as is now a days the case) enrolls or joins any armed forces, at all times, their expectation is to be treated with dignity and honour. The present case has demonstrated again and again how dignity, honour and compassion towards the appellant were completely lacking in behaviour by the respondent employer.

Repeatedly the record displays a sense of disdain, and discrimination, even a hint of stigma, attached to the appellant, in the attitude of the respondent employer. Although this court has attempted to give tangible relief, at the end of the day it realizes that no amount of compensation in monetary terms can undo the harm caused by such behaviour which has shaken the foundation of the appellant's dignity, robbed him of honour and rendered him not only desperate even cynical.

Concluding directions

92. As a result of the above discussion, it is held that the appellant is entitled to compensation, calculated at ₹ 1,54,73,000/- (Rupees one crore fifty four lakhs seventy three thousand only) towards compensation on account of medical negligence of the respondents, who are held liable, for the injury suffered by the appellant. It is also held that since individual liability cannot be assigned, the respondent organizations (IAF and Indian Army) are held vicariously liable, jointly, and severally, to the above extent. The amount shall be paid to the appellant within six weeks by the IAF, his employer; it is open to the IAF to seek reimbursement, to the extent of half the sum, from the Indian Army. All arrears related to disability pension too shall be disbursed to the appellant within the said six weeks period.

93. In keeping with the mandate of the HIV Act, the following directions are issued to the Central and State Governments:

1) Under Section 14 (1) of the HIV Act, the measures to be taken by the Central Government and all the State Government are, to provide, (as far as possible), diagnostic facilities relating to HIV or AIDS, Antiretroviral therapy and Opportunistic Infection Management to people living with HIV or AIDS.

2) The Central Government shall issue necessary guidelines in respect of protocols for HIV and AIDS relating to diagnostic facilities, Antiretroviral therapy and opportunistic Infection Management applicable to all persons and shall ensure their wide dissemination at the earliest, after consultation with all the concerned experts, particularly immunologists and those involved in community medicine, as well as experts dealing with HIV and AIDS prevention and cure. These measures and guidelines shall be issued within three months, and widely disseminated, in the electronic media, print media and all popularly accessed public websites.

3) Under Section 15 (1) & (2) of the HIV Act, the Central government and every State Government shall take measures to facilitate better access to welfare schemes to persons infected or affected by HIV or AIDS. Both the Central and State Governments shall frame schemes to address the needs of all protected persons.

4) Under Section 16 (1) of the HIV Act, the Central and all the State Governments, shall take appropriate steps to protect the property of children affected by HIV or AIDS. By reason of Section 16 (2) of the HIV Act, the parents or guardians of children affected by HIV and AIDS, or any person acting for protecting their interest, or a child affected by HIV and AIDS may approach the Child Welfare Committee [within the meaning of that expression under Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000]

for the safe keeping and deposit of documents related to the property rights of such child or to make complaints relating to such child being dispossessed or actual dispossession or trespass into such child's house.

5) The Central and every State Government shall formulate HIV and AIDS related information, education and communication programmes which are age-appropriate, gender-sensitive, non-stigmatising and nondiscriminatory.

6) The Central Government shall formulate guidelines [under Section 18(1) of the HIV Act] for care, support and treatment of children infected with HIV or AIDS; in particular, having regard to Section 18 (2) "notwithstanding anything contained in any other law for the time being in force", the Central Government, or the State governments shall take active measures to counsel and provide information regarding the outcome of pregnancy and HIV- related treatment to the HIV infected women. The Central Government shall also notify HIV and AIDS policy for establishments in terms of Section 12 of the HIV Act.

7) It is further directed that under Section 19 of the HIV Act, every establishment, engaged in the healthcare services and every such other establishment where there is a significant risk of occupational exposure to HIV, for the purpose of ensuring safe working environment, shall (i) provide, in accordance with the guidelines, firstly, universal precautions to all persons working in such establishment who may be occupationally exposed to HIV; and secondly training for the use of such universal precautions; thirdly post exposure prophylaxis to all persons working in such establishment who may be occupationally exposed to HIV or AIDS; and (ii) inform and educate all persons working in the establishment of the availability of universal precautions and post exposure prophylaxis.

8) By reason of Section 20 (1) of the HIV Act, the provisions of Chapter VIII70 of the HIV Act apply to all establishments consisting of one hundred or more persons, whether as an employee or officer or member or director or trustee or manager, as the case may be. In keeping with proviso to Section 20 (1) of the HIV Act, in the case of healthcare establishments, the said provision shall have the effect as if for the words "one hundred or more", the words "twenty or more" were substituted.

9) Every person who is in charge of an establishment, mentioned in Section 20 (1) of the HIV Act, for the conduct of the activities of such establishment, shall ensure compliance of the provisions of the HIV Act.

10) Every establishment referred to in Section 20 (1) of the HIV Act has to designate someone, as the Complaints Officer who shall dispose of complaints

of violations of the provisions of the HIV Act in the establishment, in such manner and within such time as may be prescribed. The rules in this regard may be formulated by the Central Government at the earliest, preferably within 8 weeks from today.

11) The Secretary, Department of Labour of every state shall ensure the collection of information and data relating to compliance with Sections 19 and 20 of the HIV Act, in regard to designation of a complaint officer, in all the factories, industrial establishments, commercial establishments, shops, plantations, commercial offices, professional organizations, and all other bodies falling within the definition of "establishments" [under Section 2 (f) of the HIV Act] which reads as follows:

"establishment" means a body corporate or co-operative society or any organisation or institution or two or more persons jointly carrying out a systematic activity for a period of twelve months or more at one or more places for consideration or otherwise, for the production, supply or distribution of goods or services."

Such information shall be forwarded to the Secretary, Union Ministry of Labour and Employment, within 10 weeks. The Union Labour and Employment Secretary shall file an affidavit of compliance containing a tabular statement, with respect to implementation of provisions of the Act, within 16 weeks from today.

12) Every court, quasi-judicial body, including all tribunals, commissions, forums, etc., discharging judicial functions set up under central and state enactments and those set up under various central and state laws to resolve disputes shall take active measures, to comply with provisions of Section 3471 of the HIV Act. Chief Justices of all High Courts, shall compile information, and device methods of collecting information in that regard, anonymizing identity of persons affected, appropriately and also complying with provisions of Section 34 (2) of the HIV Act. The Registrar General of the Supreme Court shall also look into the matter, and frame relevant guidelines which, after approval be issued and implemented.

94. Before concluding, this court would place on record its appreciation and gratitude to the amicus, Ms. Meenakshi Arora Senior Advocate, for her valuable assistance; the assistance given by Mr. Vikramjit Banerjee, the ASG; and Ms. Vanshaja Shukla, the amicus who painstakingly compiled the paper-book, and patiently heard the appellant with the aim of addressing all his concerns and assisted Ms. Arora.

The court would also acknowledge the appellant's perseverance and the diligent research and scholarship put in by him, in the relentless quest for justice. The respondents are directed to bear the costs quantified at ₹ 5,00,000/- (Rupees five lakhs only) which shall also be paid to the appellant, within six weeks.

The Supreme Court Legal Services Committee shall bear the honorarium of ₹ 50,000/- (Rupees fifty thousand only) to be paid to the amicus Ms. Shukla.

95. The appeal is allowed and any pending applications are disposed of in the above terms.

.....J. [S. Ravindra Bhat]

.....J. [Dipankar Datta]

New Delhi;

September 26, 2023

1 In Consumer Complaint No. 647 of 2017.

2 SoP for ad-hoc blood bank 171 Military Hospital

3 Letter No RO/3305/3/Med.

4 Opinion of Specialist dated 16.12.2015

5 Application dated 26.04.2016.

6 Vide Air HQ/99798/1/741570/DAV(DP/RMB).

7 Dated 05.05.2017.

8 Vide letter no 6004/A/GS (Edn).

9 Dated 12.06.2018.

10 Clause 1.3.1 of Indian Medical Council (Professional Conduct Etiquettes and Ethics) Regulations, 2002.

11 Letter no. 4180/Adm./RTI/2019, dated 3.7.2019.

12 [2004] SUPP. 5 S.C.R. 359.

13 [2010] 5 S.C.R. 1.

14 [2009] 6 S.C.C. 1.

15 Section 1.3.1 Maintenance of medical records:

1.3.1 Every physician shall maintain the medical records pertaining to his/ her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India [..]

16 Dated 24.5.2014 by the Surg Capt. Vivek Hande of HIV Physician/expert, INHS Ashvini, Mumbai.

17 Dated 12.12.2014, 24.6.2015, 21.12.2015.

18 No. Air HQ/99798/1/741570/DAV(DP/RMB) dated 14.12.2016 and 29.8.2017.

19 Letter no. SWAC/S1276/1/AD, dated 24.5.2016.

20 IAP-4303 & GMO-2008.

21 18B. Maintenance of records and furnishing of information. -Every person holding a licence under clause (c) of section 18 shall keep and maintain such records, registers and other documents as may be prescribed and shall furnish to any officer or authority exercising any power or discharging any function under this Act such information as is required by such officer or authority for carrying out the purposes of this Act.

22 [1995) SUPP. 1 S.C.R 389.

23 [2008] 12 S.C.R. 54.

24 [1970] 1 S.C.R. 457.

25 Decided on September 25, 1997.

26 Vide Letter No. SWAC/ 3451 / 1103 / PIO, dated 20th Feb 2017; vide Letter No. SWAC / 3451 / 1103 / PIO, dated 14.03.2017; vide Letter No. Air HQ / 23401/204/ 4 / 11245 /E / PS, dated 26.04.2017; vide Letter No. DCA / Pen -III / Court Case /2018, Dated 07.01.2019.

27 [1998] 2 S.C.R. 428.

28 [2007] 6 S.C.R. 139.

29 (2007) 4 SCC 596.

30 [2004] SUPP. 5 S.C.R. 359.

31 (d) "consumer" means any person who,-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

[Explanation.- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.]

32 (o) "service" means service of any description which is made available to potential [users and includes, but not limited to, the provision of] facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction,] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

33 2021 SCC OnLine SC 3165.

34 [2005] Supp 2 SCR 307; (2005) 6 SCC 1.

35 [2009] 3 SCR 273; (2009) 3 SCC 1.

36 Including - "Haematological changes in HIV infection with correlation to CD4 cell count" published in Australasian Medical Journal and a Lancet Article titled "Prevalence of anemia among people living with HIV: A systematic review and meta analysis".

37 Forwarding of personal application 741570-B CPL AK Chauhan ADSO in Letter no. SWAC/S1276/1/AD, dated 24.5.2016.

38 2021 (9) SCR 1024.

39 1995 Supp (5) SCR 110.

40 1999 (5) Suppl. SCR 294.

41 2019 (12) SCR 516.

42 2020 (5) SCR 176.

43 1993 (2) SCC 746.

44 1996 (2) Suppl. SCR 295.

45 1989 (2) SCR 697.

46 1980 (2) SCR 873.

47 1969 (3) SCC 769.

48 (2004) 3 SCC 553.

49 2021 (1) SCR 1064.

50 Col. Nijhawan was asked - "Can you produce Case Sheet With document stating that blood has been duly screened for markers as per policy including HIV?" and it was replied that "No records are available".

51 Lt Col Devika Bhat was asked - "Was the screening of blood for HIV before transfusion dispensed with?" and she replied that -"The requisite blood was duly screened as per existing guidelines in vogue at that time. The same may please be confirmed from 171 MH."

52 <https://www.medicalnewstoday.com/articles/316056>, HIV timeline: What are the stages, (last accessed on 16.09.2023 at 05.17 AM).

53 Guidelines on HIV Testing issued by the Union Ministry of Health and Family Welfare, National Aids Control Organization (NACO), 2007

54 So called, due to the case: Bolam v Friern Hospital Management Committee 1957(2) All.ER 118.

55 [2019] 3 SCR 281.

56 [1985] AC 871.

57 2015 UKSC 11.

58 1992 175 CLR 479.

59 Charlesworth & Percy on Negligence, 14th Edition (2018) Sweet and Maxwell @ 6-25, page 400.

60 [2010] 5 SCR 1.

61 2021 (10) SCR 1118.

62 2010 (13) SCR 179.

63 (2009) 13 SCR 1.

64 [2022] 8 S.C.R. 403.

65 (2012) 11 SCR 414.

66 2022 (16) SCR 1.

67 2015 (8) SCR 100.

68 Section 2 (d) (b) defines discrimination as something where a person "denies or withholds any benefit, opportunity or advantage from any person or category of persons, based on one or more HIV-related ground" Section 3, inter alia, states that:

"3. No person shall discriminate against the protected person on any ground including any of the following, namely:-

(a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with-

(i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and Prohibition of discrimination.

(ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;

(b) the unfair treatment in, or in relation to, employment or occupation;"

69 <https://www.healthline.com/health/hiv-aids/effects-on-body#respiratory-and-cardiovascular-systems>, last accessed at 05:41 AM on 25th September, 2023.

70 Dealing with "Safe Working Environment".

71 34.(1) In any legal proceeding in which a protected person is a party or such person is an applicant, the court, on an application by such person or any other person on his behalf may pass, in the interest of justice, any or all of the following orders, namely:-

(a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the proceedings in such manner as may be prescribed;

(b) that the proceeding or any part thereof may be conducted in camera;

(c) restraining any person from publishing in any manner any matter leading to the disclosure of the name or status or identity of the applicant.

IN THE SUPREME COURT OF INDIA

M/S Paul Rubber Industries Private Limited

Vs.

Amit Chand Mitra & Anr.

**[Civil Appeal No. _____ of 2023
arising out of SLP (Civil) No. 15774/2022]**

HEADNOTE – In order to attract the application of Section 106 of the Transfer of Property Act, 1882, which requires 6 months' notice for termination of lease, the burden is on the Tenant to prove that manufacturing activity was being carried on in the leased Premises. A mere statement that manufacturing activity was being done would not suffice, the Tenant must explain the nature of work being done in factory shed.

JUDGMENT

Aniruddh Bose, J.

1. Leave granted.

2. The main point which we have to address in this appeal is as to what extent the Court can take cognizance of a clause relating to purpose for which a lease is granted contained in an unregistered deed of lease for immovable property stipulating its duration for a period of five years. In the judgment under appeal, opinion of a Division Bench of the Calcutta High Court is that such deed cannot be received as evidence of any transaction affecting the property over which the lease is executed.

On 27.03.2003, a document captioned "Tenancy Agreement" was executed by and between one Sabita Mitra (the landlady, since deceased), now represented before us by her legal heirs being the two respondents and an incorporated company, Paul Rubber Industries Private Limited. The latter is the appellant in this proceeding. In this judgment, we shall refer to the landlady and her legal representatives as the respondents interchangeably and the appellant Paul Rubber Industries Pvt. Ltd. shall be described as defendant.

The property in question comprises of approximately 16 cottahs (one cottah is equivalent to approximately 720 sq. ft.) of land situated at Radha Madhab Dutta Garden Lane, within the city of Kolkata. The tenure of the agreement, as stipulated therein was for a period of five years with provision for renewal for further five years. There is stipulation for further renewal for such period and on such terms and conditions as might have been agreed upon by the parties.

This is contained in clause 2 of the agreement. But no such renewal was effected. First five years of the tenancy stood completed on 31.10.2007, and a letter was sent by the landlady on 07.11.2007 seeking enhancement of rent. It does not appear that the defendant had paid rent thereafter. It had, however, raised a plea that such rent used to be collected on behalf of the landlady on due date, but this was stopped after October 2007.

Thereafter, on 06.03.2008, the landlady served a notice requiring the defendant to vacate the subject-premises with effect from 31.03.2008. In this letter of 06.03.2008, the defendant was addressed as monthly tenant. Default in payment of monthly rent was highlighted in this letter.

It was also specified therein that the landlady needed the said premises for her own use and occupation and for business purpose of her family members. This letter is being projected by the respondents as notice for fifteen days, as per stipulation of Section 106 of the Transfer of Property Act, 1882 (herein after "1882 Act").

3. The tenant had not delivered vacant possession as a result of which the suit, which gives rise to the present appeal, was instituted by the landlady on 04.09.2008 before the Civil Judge, Senior Division at Sealdah, having jurisdiction over the suit property. The original plaintiff (i.e. the landlady) claimed, interalia, recovery of possession as also decree for mesne profit. Various defences were set up by the defendant in its written statement.

One of them was that since it was an agreement for lease under which it was inducted as a tenant and the same was unregistered, the suit was not maintainable. Another plea of the defendant was that the subject property stood vested in the State under the thika tenancy law. This is a special type of tenancy prevalent in the Kolkata region involving multiple-tier of tenancy and ownership structure.

The defendant claimed to have filed certain returns before the Thika Controller. This issue was not raised before the High Court and is not in lis before us also. The defendant in the written statement, denied expiry of tenancy on 31.01.2007. As regards default in payment of rent, we have already referred to the defendant's stand. Altogether, five issues were framed by the Trial Court.

The first two issues framed by the Trial Court related to maintainability of the suit in the form it was framed and subsistence of cause of action. These two issues had not been pressed during trial and the Trial Court found that the suit was maintainable. The other three issues related to the question as to whether the plaintiff was entitled to the reliefs claimed or not.

4. The defendant, in its written statement, referred to the said agreement of 27.3.2003. In paragraphs 6,8 and 10 of the written statement, main defence of the defendant was disclosed. Plea was also taken denying default and vesting of the property in the State under the thika tenancy law.

Before us, arguments have been advanced mainly on legal position of the unregistered agreement and the consequences thereof. Rest of the written statement contained broad denial of the plaintiff's claims. We quote below the said three paragraphs of the written statement:-

"6. As a matter of fact, the plaintiff by representating herself to be the Owner/Landlady of the suit premises inducted the defendant therein as a lessee as would be evident from the Agreement dated 27.3.2003. The plaintiff has not sought any leave from this Learned Court to rely upon the said Agreement neither a copy of which has been filed. However this defendant craves leave of this Ld. Court to rely upon the said Agreement at the time of hearing. The aforesaid Agreement on the face of it was an Agreement of Lease not registered under the statute and accordingly the suit is not maintainable.

8. It is denied that the tenancy if at all, expired on 31.01.2007 as the defendant was assured of a renewal by the plaintiff and the defendant was willing to renew the same which was known to the plaintiff.

10. The notice of the plaintiff served upon the defendant is defective. Admittedly the defendant was a Lessee under the plaintiff on the strength of the aforesaid Agreement and on expiry of the initial period of five years was subject to a renewal. The plaintiff never denied the fact of renewal to the defendant and is therefore put to the strictest proof thereof."

Main argument before the Trial Court centred around legality of the notice. The defendant's case was that the premises was let out for manufacturing purpose and in terms of Section 106 of the 1882 Act, a clear six months' notice was required to be given. The Trial Court on analysis of evidence found that the suit property was not let out for agricultural or manufacturing purpose.

5. The Trial Court held:-

"I have no hesitation to hold that the tenancy of the defendant was month by month governed under the T.P. Act and after expiry of terms of the lease, the said tenancy was not extended by the parties with mutual consent as per provision of the agreement dated 27.03.03. It is the case of the plaintiff that the defendant is also a defaulter and he did not pay the rent of the suit premises from October, 2007.

Such contention of the plaintiff is also admitted by the plaintiff that the rent, municipal charges and maintenance charges of the suit premises were not paid by the defendant from October, 2007 but pleaded that the plaintiff never sent her representative to the defendant for collection of rent which was the usual practice. From Ext. 7 which is the notice issued upon the defendant, it appears that a 15 days clear notice was duly served upon the defendant by the plaintiff asking him to quit and vacate the suit premises on and from 31.03.08.

It is further appears from the case record that during the trial, the defendant has filed a return before the reasonable office of Thika Controller for determination of right title interest under the Thika Tenancy Act along with others which was registered as Misc. Case 79 & 80 of 2007. From Ext. 8 filed by the plaintiff, it appears that upon hearing the parties, the Ld. Thika Controller was pleased to hold that the plaintiff is the recorded owner of the suit premises.

So, from the overall discussion, evidence and materials on record, I am of view that the suit premises was let out to the defendant for other purposes other than agricultural or manufacturing purposes and such tenancy of the defendant deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days notice and after expiry of the term of the lease i.e. on 31.10.07, a clear 15 days notice was served upon the defendant requesting him to quit and vacate the suit premises and hand over the peaceful possession of the same to the plaintiff. As such, the plaintiff is entitled to get relief as prayed for. Hence, the above issues are also decided in favour of the plaintiff."

(quoted verbatim from the paperbook)

6. The Trial Court found that the tenancy of the defendant was month by month governed under the 1882 Act and after the expiry of the lease, the said tenancy was not renewed by the parties on mutual consent as per the terms and provisions of the agreement dated 27.03.2003. On the question of Thika tenancy, the Trial Court recorded that the Thika Controller had already held that the plaintiff was the owner of the suit premises.

7. The appeal of the defendant was examined by the Division Bench of the High Court and on considering a large body of authorities, the High Court found no reason to interfere with the judgment of the Trial Court. The appeal was dismissed. It was the view of the High Court that the agreement being unregistered, the same could not be looked into for determining the rights and liabilities of the parties and for its duration.

On the question as to whether the purpose of the lease was "manufacturing" or not, the High Court held that it was for the appellant to establish that factor. The

appellant not having adduced any evidence in that regard, the High Court drew adverse inference on that count and the Trial Court judgment was not interfered with.

8. For the purpose of adjudicating the present appeal, we need to look into the provisions of Sections 105, 106 and 107 of the 1882 Act and the provisions of Sections 17 and 49 of the Registration Act, 1908 (hereinafter "1908 Act"). The said provisions of the 1882 Act stipulate:-

"105. Lease defined.-

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.-

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

[106. Duration of certain leases in absence of written contract or local usage.-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in subsection (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to

be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.]

107. Leases how made.-

A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

[All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

[Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]"

Sections 17 and 49 of the 1908 Act read:-

"17. Documents of which registration is compulsory.-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:]

Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable

property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subjectmatter of the suit or proceeding]; or

(vii) any grant of immovable property by [Government]; or

(viii) any instrument of partition made by a Revenue- Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgagemoney, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue- Officer.

[Explanation.- A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered."

"49. Effect of non-registration of documents required to be registered.-

No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.]"

9. The aforesaid provisions were analysed by this Court in the case of Anthony - vs- K.C. Ittoop & Sons and Others [(2000) 6 SCC 394], and this authority was also cited before the High Court. This was a case in which the respondent was inducted into possession of a premises under a lease deed for a period of five years, but the deed was not registered. It has been held in this judgment:-

"11. The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker (vide Shantabai v. State of Bombay [AIR 1958 SC 532 : 1959 SCR 265] , Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369] and Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806].

12. But the above finding does not exhaust the scope of the issue whether the appellant is a lessee of the building. A lease of immovable property is defined in Section 105 of the TP Act. A transfer of a right to enjoy a property in consideration of a price paid or promised to be rendered periodically or on specified occasions is the basic fabric for a valid lease. The provision says that such a transfer can be made expressly or by implication.

Once there is such a transfer of right to enjoy the property a lease stands created. What is mentioned in the three paragraphs of the first part of Section 107 of the TP Act are only the different modes of how leases are created. The first para has been extracted above and it deals with the mode of creating the particular kinds of leases mentioned therein.

The third para can be read along with the above as it contains a condition to be complied with if the parties choose to create a lease as per a registered instrument mentioned therein. All other leases, if created, necessarily fall within

the ambit of the second para. Thus, dehors the instrument parties can create a lease as envisaged in the second para of Section 107 which reads thus:

"All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession."

13. When lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication, the mere fact that an unregistered instrument came into existence would not stand in the way of the court to determine whether there was in fact a lease otherwise than through such deed."

10. The same view was broadly reflected in the cases of Shri Janki Devi Bhagat Trust, Agra -vs- Ram Swarup Jain (Dead) by Lrs. [(1995) 5 SCC 314] and Satish Chand Makhan and Others -vs- Govardhan Das Byas and Others [(1984) 1 SCC 369]. Section 107 of the 1882 Act which we have quoted above stipulates that a lease of immovable property from year to year or for any term exceeding one year can be made only by a registered instrument.

So far as Section 106 of the said statute is concerned, in which distinction is made between lease of immovable property for agricultural or manufacturing purpose and lease of immovable property for any other purpose, the same provides that a lease of immovable property for agricultural or manufacturing purpose shall be deemed to be a lease from year to year terminable by six months' notice. In other cases, termination would require fifteen days' notice.

The subject agreement had a duration of five years with a provision for renewal for a further period of five years. Hence under the first part of Section 107, for the said lease agreement to be admissible, registration of the same would have been necessary. The deeming provision of sub-section (1) of Section 106 so far the same related to lease for agriculture or manufacturing purpose would not be applicable as the deed was not registered.

The appellant has argued that the Trial Court had admitted the lease agreement in evidence, and for determining the purpose of lease, we can examine the deed. But this argument is flawed. This provision contemplates lease for manufacturing purpose, in absence of contract or local law to the contrary, shall be deemed to be year to year lease. In that case, it would require six months' notice for termination. But here, the agreement itself provides a five year duration, and hence ex-facie becomes a document that requires compulsory registration.

That is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act. The Court cannot admit it in evidence, as per the judgment in the case of Anthony (supra). A coordinate Bench in the case of Shyam Narayan

Prasad -vs- V. Krishna Prasad and Ors. [(2018) 7 SCC 646] has re-affirmed this view, referring to Section 49 of the Registration Act. This is a prohibition for the Court to implement and even if the Trial Court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage.

The parties cannot by implied consent confer upon such document its admissibility. It is not in dispute in this case that the period between service of notice and institution of the suit fell short by four days of completion of six months. In any case, we do not consider it necessary to address this question as in our opinion, the requirement to give six months' notice does not arise in this case. That point has not been raised before us.

11. The fault line in the defendant's case also lies on the point as to whether the lease was for manufacturing purpose or not, which was examined by the High Court and decided against the appellant. The defendant tried to establish from the clause of the lease agreement, statement made in the plaint as also his evidence before the Trial Court that the lease was for manufacturing purpose. All these materials no doubt point to the fact that the lease was given for commercial purpose (as pleaded in the plaint).

In cross-examination, DW-1 had stated that he was doing business of rubber. In the case of G. Mackertich -vs- Steuart and Co. Ltd. [(1971) 3 SCC 39], it has been held that burden of proving that the lease was for manufacturing purpose lies on the party who claims it to be so. In the present appeal, it would have been for the defendant (appellant before us) to discharge this burden, as held by the High Court.

In the case of Shivaji Balaram Haibatti -vs- Avinash Maruthi Pawar [(2018) 11 SCC 652] as also in a judgment of the Calcutta High Court in the case of Messrs Shree Nursing Timber Works and Messrs. Shree Nursing Electric Stores -vs- Sm. Amala Bala Dassi [1973 CWN 522], it has been held that on this ground, there must be pleading supported by evidence to prove that the lease was for manufacturing purpose.

12. On behalf of the appellant, however, it was urged, referring to the provisions of Section 49 of the Registration Act that for establishing nature and purpose of possession, even an unregistered document could be looked into as that would come within the ambit of collateral purpose. On this point, judgment of this Court in the case of Sevoke Properties Ltd. -vs- West Bengal State Electricity Distribution Company Limited [(2020) 11 SCC 782] has been relied upon.

In the case of Sevoke Properties (supra) a coordinate Bench opined that as the agreement for lease in that case was unregistered, contents of the instrument were inadmissible in evidence. There was admission in the written statement of respondent in the case of Sevoke Properties (supra) by the defendants that they were in occupation under the lease agreement (in controversy in that case) for a period of fifteen years with effect from 1981 and that period of lease had expired on 24.05.1996.

The issue decided in that case was whether the lease stood determined by efflux of time and once it did, what would be the position of the lessee? The coordinate Bench found that the position of the lessee would be that of a tenant at sufferance. In that context, it was held that there was no necessity to terminate the lease under Section 106 of 1882 Act. That case was decided on the basis of admission in written statement and has no application to the facts of the present case.

The observation made in the case of Sevoke Properties (supra) that only purpose for which the lease can be looked at for assessing nature and character of the possession was in that context and that judgment proceeded on the basis that the period of lease had expired on a certain date. This decision is not an authority for the proposition that nature and character of the possession in an unregistered lease deed could always constitute collateral purpose so that the Court could examine the deed for that reason.

The purpose for which lease is granted forms an integral part of the lease deed in this case and this very issue forms one of the main disputes. The expression "collateral purpose" has been employed in proviso to Section 49 of the Registration Act to imply that content of such a document can be used for purpose other than for which it has been executed or entered into by the parties or for a purpose remote to the main transaction.

This view was taken by this Court in an earlier decision, in the case of K.B. Saha and Sons Private Limited -vs- Development Consultant Limited [(2008) 8 SCC 564]. The position of law on this point has been summarized in paragraph 34 (of the report) in this judgment:-

"34*. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

13. In the case of Rai Chand Jain -vs- Miss Chandra Kanta Khosla [(1991) 1 SCC 422], dispute arose as to whether certain premises were let out for residential purpose or as to whether there was an oral agreement of letting out the premises to the tenant, for running a press. It was in that perspective, it was held in the said case that a lease deed though unregistered, could be considered for collateral purposes to show the purpose for which the premises was leased out.

Thus, the lease deed was referred to for the sole purpose to defeat the claim of subsistence of an oral agreement. The ratio of this authority has been considered in the case of K.B. Saha and Sons Private Limited (supra) and we follow that ratio. In the case of Satish Chand Makhan (supra), another coordinate Bench of this Court declined to accept admissibility of an unregistered lease agreement for determining duration of the lease (9 years in that case) on the reasoning that terms of lease would not constitute collateral purpose. It was observed in this judgment that "nature and character of possession" could constitute collateral purpose but that was not the point which was directly in lis before this Court.

In our opinion, nature and character of possession contained in a flawed document (being unregistered) in terms Section 107 of the 1882 Act and Sections 17 and 49 of the Registration Act can form collateral purpose when the "nature and character of possession" is not the main term of the lease and does not constitute the main dispute for adjudication by the Court. In this case, the nature and character of possession constitutes the primary dispute and hence the Court is excluded by law from examining the unregistered deed for that purpose. In respect of the suit out of which this appeal arises, purpose of lease is the main lis, not a collateral incident.

14. We, however, need not further dilate on this question. The lease was for use by the predecessor of the appellants "for the purpose of his business and/or factory." The property was described in the schedule to be estimated 16 cottahs of land "with a factory shed/godown space". Such description would not be

sufficient to establish that the same was for manufacturing purpose. In the decision of this Court in *Allenbury Engineers Pvt. Ltd. -vs- Ramkrishna Dalmia and Others* [(1973) 1 SCC 7], the expression 'manufacturing purpose' as employed in Section 106 of the 1882 Act was explained to mean:-

"8. The expression "manufacturing purposes" in Section 106, thus, means purposes for making or fabricating articles or materials by physical labour, or skill, or by mechanical power, vendible and useful as such. Such making or fabricating does not mean merely a change in an already existing article or material, but transforming it into a different article or material having a distinctive name, character or use or fabricating a previously known article by a novel process."

15. In *Park Street Properties Private Limited -vs- Dipak Kumar Singh and Another* [(2016) 9 SCC 268], which was cited in the case of *Sevoke Properties* (supra), it was observed that in the absence of a registered instrument, the courts are not precluded from determining the factum of tenancy from other evidence on record as well as the purpose of tenancy.

In this case, factum of creation of tenancy has been established. But the purpose of tenancy, so as to attract the six months' notice period under Section 106 of the 1882 Act cannot be established by such evidence as in such a situation, registration of the deed would have been mandatory. The onus would be on the defendant to establish the fact that manufacturing activity was being carried on from the demised premises.

A mere statement by the DW-1 to which we have referred earlier or the purpose of lease as specified in the lease agreement would not be sufficient to demonstrate the purpose of lease to be for manufacturing. This could be proved by explaining what kind of work was being carried on in the factory shed. In such a situation also, the registration of the deed would have been necessary.

In absence of such registration, tenancy would have been of "month to month" character. For these reasons, we do not think the High Court erred in law in dismissing the defendant's appeal. The present appeal shall stand dismissed on the same rationale.

15. Pending application(s), if any, shall stand disposed of.

16. There shall be no order as to costs.

.....**J. (Aniruddha Bose)**

.....**J. (Vikram Nath)**

**New Delhi;
September 25th, 2023.**

IN THE SUPREME COURT OF INDIA

Rahimal Bathu and Ors.

Vs.

Ashiyal Beevi

**Civil Appeal No. _____ of 2023
arising out of SLP (C) No. 8428 of 2018**

HEADNOTE – Revision petition under Sec. 115 CPC cannot be entertained against order of trial court rejecting review of decree

JUDGMENT

Manoj Misra, J.

1. Leave granted.

2. This is defendants' appeal against the order of the Madurai Bench of Madras High Court (in short, 'the High Court'), dated 12.09.2017, passed in C.R.P. (NPD) (MD) No. 1342 of 2007, by which the revision of the plaintiff-respondent was allowed, the order dated 20.12.2006 passed by the court of First Additional Sub Court, Tirunelveli in I.A. No. 207 of 2001 in O.S. No. 276 of 1992 was set aside, I.A. No. 207 of 2001 was allowed and the decree dated 21.11.1996 passed in O.S. No. 276 of 1992 was modified.

Factual Matrix

3. The respondent instituted an Original Suit (in short, "O.S.") No. 276 of 1992 for declaring her as the exclusive owner of the property described in the second schedule of the plaint. Additionally, possession of the said property was sought. In the alternative, it was prayed that, if the court concludes that she is not the exclusive owner of the property, her share therein be declared one-sixth and the same be partitioned accordingly.

4. The plaint case is that,- the suit property was of plaintiff's grandmother Fathima Beevi, which the plaintiff purchased from her vide sale-deed dated 14.11.1990; the first defendant (i.e., the appellant no.1) is the daughter-in-law of Fathima Beevi whereas defendant nos. 2 to 6 are her children; taking advantage of staying with Fathima Beevi, the husband of the first defendant, namely, Khaja Mohideen, got a gift-deed executed in his favour from Fathima Beevi on 24.04.1982; the said gift-deed was obtained by exercising undue influence and coercion and was never acted upon and is therefore a nullity.

In the alternative, it was pleaded that, if the gift-deed is accepted, since the husband of the first defendant died on 31.05.1988 (i.e., before the death of his mother Fathima Beevi), Fathima Beevi had one-sixth share in the property which would come to the plaintiff under the sale-deed dated 14.11.1990.

5. The appellants, who were defendants in the suit, contested the suit on various grounds. On the pleadings of the parties, inter alia, following issues came up for consideration:

(i) Whether the plaintiff is entitled to ownership and possession of the entire second schedule property or only a onesixth share therein?

(ii) Whether the gift-deed, dated 24.04.1982, was fraudulently obtained from Fathima Beevi and never acted upon?

(iii) Whether the sale-deed dated 14.11.1990, executed by Fathima Beevi in favour of plaintiff, valid?

(iv) Whether the property described in the second schedule belonged to Fathima Beevi on the basis of a Hiba executed by her father?

6. The trial court held that,- the property concerned was gifted to Fathima Beevi by her father; the gift-deed dated 24.04.1982 executed by Fathima Beevi in favour of Kaja Mohideen (first defendant's husband) is invalid; the sale-deed dated 14.11.1990 in favour of the plaintiff is valid; and that the plaintiff is entitled to one-sixth share in the second schedule property. In terms thereof, the suit was decreed for one-sixth share in the suit property.

7. As the trial court found the gift-deed dated 24.04.1982 invalid and sale-deed dated 14.11.1990 valid, the plaintiff filed a review application (I.A. No. 207 of 2001), inter alia, claiming that the suit ought to have been decreed in its entirety and not for mere one-sixth share. This review application was rejected on merits by the trial court vide order dated 20.12.2006.

8. Aggrieved by rejection of the review application, the plaintiff (i.e. the respondent herein) filed civil revision before the High Court under Section 115 of the Code of Civil Procedure, 1908 (in short, 'the CPC').

9. The High Court entertained the revision and, by the impugned judgment and order dated 12.09.2017, allowed it. The High Court not only set aside the order of the trial court rejecting I.A. No. 207 of 2001 but it also allowed the review application and modified the decree dated 21.11.1996 in terms prayed for in the review application. In consequence, the decree of the trial court, which was in

respect of one-sixth share only in the second schedule property, was extended to the whole of it. The operative portion of the impugned order is extracted below:

"consequently, the judgment and decree, dated 21.11.1996, passed in O.S. No. 276 of 1992, on the file of the Ist Additional Sub Court, Tirunelveli, are modified to the effect that the plaintiff is entitled for declaration that the second schedule property belongs to her absolutely and consequently, she is entitled to recover the possession of the same from the defendants."

10. Aggrieved by the judgment and order of the High Court, the defendants are in appeal.

11. We have heard Mr. A. Sirajudeen, learned senior counsel for the appellants and Mr. V. Prabhakar, learned counsel, for the respondents.

Submissions on behalf of the appellants

12. Learned counsel for the appellants submitted:

(i) The High Court exceeded its jurisdiction by entertaining a revision against an order which declined review of an appealable decree;

(ii) Assuming that the revision was maintainable, High Court could not on its own modify trial court's decree which was not the subject matter of challenge before the High Court;

(iii) If the trial court had committed any jurisdictional error in rejecting the review application, the High Court should have remitted the matter back to the trial court for a fresh consideration of the review application;

(iv) If the High Court's order is allowed to stand, defendants' right of an appeal under Section 96 of the CPC would get affected as the trial court's decree would get merged in the decree modified by the High Court.

13. On the strength of the aforesaid submissions, the learned counsel for the appellants prayed that the judgment and order of the High Court be set aside and if the plaintiff-respondent has any grievance against the judgment and decree of the trial court, she may take recourse to the remedy of an appeal under Section 96 of the CPC.

Submissions on behalf of the respondent

14. Per contra, the learned counsel for the respondents submitted:

(i) Against an order rejecting a review application, no appeal lies (See Order XLVII, Rule 7(1) of the CPC). The term "Case", used in Section 115 of the CPC, is a word of comprehensive import and includes civil proceedings other than the suit, therefore, there can be no legal bar in entertaining a revision against rejection of a review application;

(ii) The Explanation to Section 115 of the CPC makes it clear that "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding, which means that the expression "any case which has been decided" is all inclusive and not exclusive;

(iii) The revisional powers vested in the High Court under Section 115 of the CPC are wide enough to correct jurisdictional errors and while correcting such jurisdictional errors, the High Court can pass such orders as may be required to serve the ends of justice;

(iv) The concluding part of trial court's judgment on the basis whereof decree was drawn is contradictory to the body of the judgment, inasmuch as, if the gift deed dated 24.04.1982 is invalid and the sale-deed in favour of the plaintiff is valid, the plaintiff would be entitled to exclusive ownership and possession of the property in dispute. Thus, there was an error apparent on the face of the record which ought to have been corrected in the review. However, since it was not corrected, the High Court in exercise of its powers under Section 115 of the CPC was justified in modifying the decree.

15. To buttress his submission that the High Court justifiably exercised revisional power, the learned counsel for the respondent relied on several decisions enumerated and discussed below:

(i) Major S.S. Khanna v. Brig. F.J. Dillon¹; which we shall deal with at a later stage.

(ii) Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat². This is a decision which lays down the conditions in which revisional powers could be exercised and clarifies that if there are two modes of invoking the jurisdiction of the High Court and one of them is chosen and exhausted it would not be proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate Court. It holds that though Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction exercised thereunder is a part of the general appellate jurisdiction of the High Court as a superior Court. Therefore, the principle of merger of orders of inferior courts in those of superior Courts would be applicable.

(iii) Vinod Kumar Arora v. Smt. Surjit Kaur³. This is a decision which deals with the general principles governing exercise of revisional powers. It does not deal specifically with any of the issues arising in this appeal.

(iv) Srinivasiah v. Sree Balaji Krishna Hardware Store⁴. In this case it was held that where a Court proceeds to decide a case on an incorrect assumption regarding a fact, there would be ample justification to exercise the review jurisdiction.

(v) Kalpataru Agroforest Enterprises v. Union of India⁵. Herein, this Court found Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989, to the extent it restricted the scope of power of review vested under Section 18(3)(f) of the Railways Claims Tribunal Act, 1987 to non-appealable orders, violative of statutory provision and, therefore, bad.

(vi) The Managing Director (MIG) Hindustan Aeronautics Ltd. And another v. Arijit Prasad Tarway⁶. In this case it was held that the High Court had no jurisdiction to interfere with the order of the first appellate court while exercising power under Section of 115 of the CPC. It was observed that the order of the first appellate court may be right or wrong; may be in accordance with law or may not be in accordance with law; but it had jurisdiction to make that order, therefore, the High Court could not have invoked its jurisdiction under Section 115 of the CPC.

(vii) Prem Bakshi v. Dharam Dev⁷. In this case it was held that an order by trial court holding it has no jurisdiction to proceed, or that suit is barred by limitation, would amount to a final decision and as such revisable.

(viii) Rajender Singh v. Lt. Governor; Andaman & Nicobar Islands & others⁸. In this case it was observed that the power of judicial review of its own order inheres in every court of plenary jurisdiction to prevent miscarriage of justice; and courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands.

(ix) Punjab National Bank v. Shri U.P. Mehra⁹. In this case the order of which review was sought had the effect of closing defendant's evidence. The review was dismissed. Challenging the aforesaid two orders, revision under Section 115 of the CPC was filed which was dismissed upon finding that there was no jurisdictional flaw in the order of the trial court.

(x) B. Subbarao v. Yellala Maram Satyanarayana¹⁰. In this case the plaintiff sought permission to sue as a pauper. On rejection of his prayer, he filed a review application. Against rejection of that review application, he filed a revision under Section 115 of the CPC. While rejecting the objection that

revision is not maintainable against an order rejecting a review application, the High Court held that as there is no right of an appeal against rejection of a review application, the jurisdiction under Section 115 of the CPC can be invoked.

(xi) *Arya Insurance Co. Ltd. v. Lala Channoolal*¹¹. In this case it was held by the Allahabad High Court that the CPC does not provide for an appeal against refusal of a review though an appeal under Order XLIII, Rule 1(w) from an order granting a review is maintainable. However, an order rejecting the review may be brought into question in a revision.

[Note: In this case the order of which review was sought was not a decree but an order striking off defence and directing the suit to proceed ex parte.]

(xii) *Thakur Singh v. Bhaironlal*¹². In this case an ex parte decree was passed in a suit. Instead of filing an appeal or an application to set aside the ex parte decree a review was filed, which was rejected. Against rejection of the review, a revision was filed. Although the revision was dismissed but, while deciding the same, preliminary objection as to its maintainability was overruled.

Discussion

16. We have considered the rival submissions and have perused the record.

17. The short question which arises for our consideration in this appeal is: Whether a revision under Section 115 of the CPC is maintainable against an order of the subordinate Court rejecting on merits an application for review of an appealable decree passed in a civil suit?

18. To appropriately address the aforesaid issue, it would be apposite to have an overview of the relevant provisions of the CPC. An application seeking a review of a judgment and decree passed in a civil suit is maintainable under Order XLVII Rule 1 of the CPC. Rule 4 of Order XLVII provides that where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Sub rule (2) of Rule 4 provides that where the Court is of opinion that the application for review should be granted, it shall grant the same. Rule 7 of Order XLVII provides that an order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

In fact, Order XLIII Rule 1 (w) supplements Order XLVII Rule 7 by providing that an appeal would lie against an order under Rule 4 (2) of Order XLVII granting an application for review. Rule 9 of Order XLVII provides that no application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

19. From the provisions of Order XLVII of the CPC it is clear that an order rejecting a review application is not appealable.

20. In Major S.S. Khanna (supra), in a civil suit an issue was framed as to whether the suit was maintainable. The said issue was tried as a preliminary issue. The trial court held the suit not maintainable. Against the order of the trial court, a revision was preferred before the High Court under Section 115 of the CPC. The High Court of Punjab set aside the order and directed that the suit shall be heard and disposed of according to law. Aggrieved by the order of the High Court, a Special Leave Petition was filed before this Court. Before this Court it was urged:

(a) that the order under challenge before the High Court did not amount to "a case which has been decided" within the meaning of Section 115 of the CPC;

(b) that the decree which may follow would be subject to an appeal to the High Court therefore, the power of the High Court was, by the express terms of Section 115 of the CPC, excluded; and

(c) that the order did not fall within any of the three clauses (a), (b) and (c) of Section 115 of the Code. In that context, this Court observed:

"6. The validity of the argument turns upon the true meaning of Section 115 of the Code of Civil Procedure, which provides:

"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."

The section consists of two parts, the first prescribes the conditions in which jurisdiction of the High Court arises i.e. there is a case decided by a subordinate

Court in which no appeal lies to the High Court, the second sets out the circumstances in which the jurisdiction maybe exercised. But the power of the High Court is exercisable in respect of "any case which has been decided". The expression "case" is not defined in, the Code, nor in the General Clauses Act.

It is undoubtedly not restricted to a litigation in the nature of a suit in a civil court : Balakrishna Udayar v. Vasudeva Aiyar [LR 44 IA 261] ; it includes a proceeding in a civil court in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable. On the question whether an order of a Court which does not finally dispose of the suit or proceeding amounts to a "case which has been decided", there has arisen a serious conflict of opinion in the High Courts in India and the question has not been directly considered by this Court.

One view which is accepted by a majority of the High Courts is that the expression "case" includes an interlocutory proceeding relating to the rights and obligations of the parties, and the expression record of any case includes so much of the proceeding as relates to the order disposing of the interlocutory proceeding. The High Court has therefore power to rectify an order of a Subordinate Court at any stage of a suit or proceeding even if there be another remedy open to the party aggrieved i.e. by reserving his right to file an appeal against the ultimate decision, and making the illegality in the order a ground of that appeal.

The other view is that the expression "case" does not include an issue or a part of a suit or proceeding and therefore the order on an issue or a part of a suit or proceeding is not a "case which has been decided", and the High Court has no power in exercise of its revisional jurisdiction to correct an error in an interlocutory order.

7. An analysis of the cases decided by the High Courts - their number is legion - would serve no useful purpose. In every High Court from time to time opinion has fluctuated. The meaning of the expression "case" must be sought in the nature of the jurisdiction conferred by Section 115, and the purpose for which the High Courts were invested with it.

10. The expression "case" is a word of comprehensive import; it Includes civil proceedings other than suits, and is not restricted by anything contained in the section to the entirety of the proceeding in a civil court. To interpret the expression "case" as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence which the jurisdiction to issue writs, and the supervisory jurisdiction are not

subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed, and may result in the perpetration of gross injustice.

11. It may be observed that the majority view of the High Court of Allahabad in *Buddhulal v. Mewa Ram* [ILR 43 All 564 FB] founded upon the supposition that even though the word "case" has a wide signification the jurisdiction of the High Court can only be invoked from an order in a suit, where the suit and not a part of it is decided, proceeded upon the fallacy that because the expression "case" includes a suit, in defining the limits of the jurisdiction conferred upon the High Court the expression "suit" should be substituted in the section, when the order sought to be revised is an order passed in a suit.

The expression "case" includes a suit, but in ascertaining the limits of the jurisdiction of the High Court, there would be no warrant for equating it with a suit alone. (Emphasis supplied) After observing as above, in paragraph No.12, it was observed:

"12. That is not to say that the High Court is obliged to exercise its jurisdiction when a case is decided by a subordinate Court and the conditions in clauses (a), (b), or (c) are satisfied. Exercise of the jurisdiction is discretionary: the High Court is not bound to interfere merely because the conditions are satisfied.

The interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding or by a suit, and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist, should exercise its jurisdiction."

(Emphasis supplied)

21. The law laid down in *Major S.S. Khanna* (supra) by a three-Judge Bench of this Court still holds the field. Thus, it is settled that the expression "case" used in Section 115 of the CPC is of wide amplitude. It includes civil proceedings other than suits, and is not restricted to the entirety of the proceeding in a civil court.

In that sense, rejection of a review application would also be a case which has been decided and, therefore, it could be canvassed that as no appeal lies against such an order, the same is amenable to the revisional jurisdiction under Section 115 of the CPC. However, at the same time, it cannot be overlooked that exercise of revisional powers cannot be claimed as of right. It is a discretionary power.

The revisional Court is not bound to interfere merely because any of the three conditions, as laid down in Section 115 of the CPC for exercise of such power, is satisfied. Rather, the Court, exercising revisional powers, must bear in mind, inter alia, whether it would be appropriate to exercise such power considering the interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal, from the ultimate order or decree in the proceeding, or by a suit, and the general equities of the case.

22. In Major S.S. Khanna (supra) the order impugned before the revisional court was an order by which the trial court while deciding a preliminary issue held the suit as not maintainable though, the suit itself was not decided. Therefore, there was no appealable decree in existence at the time when the revisional jurisdiction was invoked. Whereas, in the case at hand there was already an appealable decree in existence when the revisional powers were invoked.

In fact, the review application sought review of an appealable decree and not just a mere order that might have been passed by the court in the course of a suit. The revision was filed against rejection of that review application. At that stage, when the review application was rejected, the aggrieved party had a right to question the decree of the trial court in an appeal. In these circumstances, the question that needs determination is, whether, against an order of the Subordinate Court rejecting on merits an application for review of an appealable decree, a revision be entertained.

23. In DSR Steel Pvt. Ltd. v. State of Rajasthan¹³, this Court had the occasion to examine different situations which may arise in relation to orders passed in a review petition. While dealing with those situations, it was observed:

"25.1. One of the situations could be where the review application is allowed, the decree or order passed by the court or tribunal is vacated and the appeal/proceedings in which the same is made are reheard and a fresh decree or order passed in the same. It is manifest that in such a situation the subsequent decree alone is appealable not because it is an order in review but because it is a decree that is passed in a proceeding after the earlier decree passed in the very same proceedings has been vacated by the court hearing the review petition.

25.2. The second situation that one can conceive of is where a court or tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review is reversed or modified. Such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated

reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law.

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification.

It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition.

Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition."

(Emphasis supplied)

24. What is clear from the above observations is, that where the review is allowed and the decree/order under review is reversed or modified, such an order shall then be a composite order whereby the court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier.

The decree so vacated, reversed or modified is then the decree that is effective for the purposes of a further appeal, if any, maintainable under law. But where the review petition is dismissed, there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition.

Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

25. Apart from above, there is another reason also for a revisional court not to entertain a revision against an order rejecting on merits an application for review

of an appealable decree, which is, if the revisional court sets aside or modifies or alters a trial court's decree, the decree of the trial court would merge in the one passed by the revisional court. In consequence, the right of the party aggrieved by the trial court's decree to file an appeal would get affected.

Further, there may be a case where a person is aggrieved by a finding of the trial court on any issue, even though the trial court's decree may be in its favour. In that scenario, if there is an appeal by a party aggrieved by the decree, that person would have a right to take an objection against the adverse finding with the aid of the provisions of Order XLI, Rule 22 of the CPC, but in the event of there being no appeal against the decree, such a person would lose its right to take an objection, under Order XLI, Rule 22 of the CPC, against that adverse finding.

26. No doubt revisional powers may be available on limited grounds, primarily to correct jurisdictional errors, but still it is a part of the general appellate jurisdiction of the High Court as a superior court. In *Shankar Ramchandra (supra)*, this Court observed:

"6. Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court.

It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal."

(Emphasis supplied)

27. In the instant case, the trial court, which had jurisdiction to allow or dismiss the review application, dismissed the review application on merits. If it had granted the review, the aggrieved party would have had a right to file an appeal under Order XLIII Rule 1 (w) read with Order XLVII Rule 7 of the CPC.

And if it had allowed the review and simultaneously altered/modified/reversed the decree, the aggrieved party would have had a right to file an appeal against the said decree. But, if the revisional court does the same, as has been done by the High Court while passing the impugned order, an anomalous situation would

arise. The decree passed by the trial court would stand modified by the High Court.

Therefore, if the defendant(s) against whom the decree is passed were to challenge the same, they would be at a disadvantage on account of the merger. Whereas, from the stand point of the plaintiff/respondent, even if we assume that the trial court's decree is inconsistent with its finding on the validity of the gift in favour of Khaja Mohideen, she can challenge the same in an appeal against the decree even after rejection of the review application.

In the event of such an appeal by the plaintiff, the defendant(s), even if they had themselves not filed an appeal against the trial court's decree, would have a right to take objection to the adverse finding(s) under Order XLI Rule 22 of the CPC. However, if the revisional court's order is allowed to stand, owing to modification of the decree by the revisional court, to which in normal course an appeal would lie, the right of an appeal to the aggrieved party would get seriously prejudiced.

28. For all the reasons above, we are of the considered view that where an appealable decree has been passed in a suit, no revision should be entertained under Section 115 of the CPC against an order rejecting on merits a review of that decree.

The proper remedy for the party whose application for review of an appealable decree has been rejected on merits is to file an appeal against that decree and if, in the meantime, the appeal is rendered barred by time, the time spent in diligently pursuing the review application can be condoned by the Court to which an appeal is filed.

29. In view of our conclusion above, the revision of the respondent against rejection of her application for review of an appealable decree ought not to have been entertained by the High Court. The appeal is, therefore, allowed. The impugned judgment and order of the High Court is set aside.

30. However, this will not affect the right of the plaintiff/respondent to file an appeal against the decree of the trial court along with an application to condone the delay, if any, in filing the appeal.

Parties to bear their own costs.

.....J. (Pamidighantam Sri Narasimha)

.....J. (Manoj Misra)

1 AIR 1964 SC 497

2 1969 (2) SCC 74

3 (1987) 3 SCC 711

4 AIR 1999 SC 462

5 (2002) 3 SCC 692

6 (1972) 3 SCC 195

7 (2002) 2 SCC 2

8 (2005) 13 SCC 289

9 AIR 2004 Del. 135

10 AIR 1961 AP 502

11 AIR 1957 All 400

12 AIR 1956 Raj 113

13 (2012) 6 SCC 782

IN THE SUPREME COURT OF INDIA

Rajesh and Anr.

Vs.

State of M.P.

Criminal Appeal No(s). 793-794 of 2022

With

Criminal Appeal No. 795 of 2022

HEADNOTE – For a confession made to the police to be admissible under Section 27 of the Evidence Act, two essential conditions must be met:

- (i) the individual must be 'accused of any offence,' and
- (ii) they must be in 'police custody' at the time the confession is made.

JUDGMENT

Sanjay Kumar, J

1. Ajit Pal @ Bobby, a 15-year-old lad, was killed brutally in the last week of July, 2013. A neighbour, Om Prakash Yadav, along with his brother, Raja Yadav, and son, Rajesh @ Rakesh Yadav, stood trial in Sessions Case No. 560 of 2013 for Ajit Pal's murder and connected offences. By judgment dated 29.12.2016 passed therein, the learned Additional Sessions Judge, Jabalpur, Madhya Pradesh, convicted all three of them on different counts.

Om Prakash Yadav was held guilty under Section 364A read with Section 120B IPC while Raja Yadav and Rajesh Yadav were held guilty of offences under Section 302 IPC read with Section 120B IPC; Section 364A read with Section 120B IPC; and Section 201 IPC. Sentences were passed against the three of them on the same day. Om Prakash Yadav was sentenced to life imprisonment along with default imprisonment of two months, if he failed to pay a fine of ₹2,000/-.

Raja Yadav and Rajesh Yadav were sentenced to death for the offences under Sections 302 and 364A IPC and to two months default imprisonment each, if they individually failed to pay the fine amounts of ₹1,000/- and ₹1,000/- respectively. Both of them were also sentenced to five years rigorous imprisonment and payment of fine of ₹500/- each in relation to the offence under Section 201 IPC coupled with one month's default imprisonment.

2. Aggrieved thereby, all three convicts appealed to the High Court of Madhya Pradesh. Their appeals were clubbed with 'In reference (CRRFC-1 of 2017)'

received from the Sessions Court in the light of the death sentences. By judgment dated 10.08.2017 delivered in Criminal Appeal No. 83 of 2017, filed by Om Prakash Yadav, and Criminal Appeal No. 84 of 2017, filed by Rajesh Yadav and Raja Yadav, along with 'In reference (CRRFC-1 of 2017)', a Division Bench of the Madhya Pradesh High Court confirmed their conviction and sentences, including the death penalty visited upon Raja Yadav and Rajesh Yadav.

3. Assailing this verdict, the three convicts are before this Court by way of these appeals by special leave. Criminal Appeal No. 793 of 2022 was filed by Rajesh Yadav and Raja Yadav in the context of Criminal Appeal No. 84 of 2017, while Criminal Appeal No. 794 of 2022 was filed by them in relation to 'In reference (CRRFC-1 of 2017)'. Criminal Appeal No. 795 of 2017 was filed by Om Prakash Yadav against the dismissal of Criminal Appeal No. 83 of 2017.

4. To establish its case, the prosecution had examined 17 witnesses before the Trial Court and marked 45 exhibits. The defence examined 3 witnesses and adduced 14 exhibits in evidence.

5. In brief, the prosecution's case is as follows: Rajwant Kaur (PW- 1), Ajit Pal's mother, received a substantial sum of money upon sale of some property by her father. This sale was effected on 22.03.2013 but prior to that, a sum of ₹10 lakhs was received by her in cash. On the date of registration of the sale deed, a sum of ₹27.5 lakhs was received by cheque, in the name of her father. The balance amount was also received in cash on the same day. Out of the ₹10 lakhs received by her, PW-1 created a fixed deposit for ₹9 lakhs and ₹1 lakh was kept in her account.

This information was in the knowledge of Om Prakash Yadav, a neighbour, and his entire family. While so, on 26.03.2013, PW-1's son, Ajit Pal, left the house at 9 o'clock in the night to see the 'Holika' and did not return. PW-1 lodged a 'missing person' report (Ex. P1) at Gorakhpur Police Station on 27.03.2013 at 16:15 hours. On 28.03.2013, PW-1's brother, Amarjeet Singh @ Mitthu (PW-2), and Om Prakash Yadav went to the Gurudwara in Gwarighat to search for the boy.

They did not find him there but while they were returning, PW-2 received a call on his mobile phone from mobile number 8305620342. The caller said - "I am Khan speaking, Bobby is with me. Send me 50 lakh rupees." PW-2 went to PW-1 to tell her about this and at that time, another call came on his mobile phone from the same number. PW-2 gave the phone to PW-1 and the caller said "I am Khan speaking. Your Bobby is with me. Send 50 lakh rupees and if you tell the police or any other person then I will cut Bobby's throat and kill him."

PW-1 told him not to do that and asked to speak to her child. She then heard a voice saying: "Mummy, save me, Mummy, save me, I am Bobby". PW1 stated that, on hearing Bobby's voice, she fell down and the mobile fell from her hand. Om Prakash Yadav took the phone and started speaking to the caller. He said "Tell us quickly where to get the money and I am getting the money with (sic) Didi". Then, Monu Gujral (PW-10), another neighbour, took the phone but it was cut.

PW-10 then used his own phone to call the kidnapper on the same number and asked to speak to Bobby. When the kidnapper let him do so, PW-10 told PW-1 that it was not Bobby's voice. Then, the caller said to PW-10 that Bobby had told him that his mother had ₹3 lakh; to send the same right away and the balance ₹20 lakh could be given in 1 month.

6. Om Prakash Yadav pressed upon PW-1 to arrange ₹1 lakh and to withdraw the rest of the ₹20 lakhs from the bank. However, PW-1 could not give ₹1 lakh to Om Prakash Yadav as there were relatives in her house. PW-10 wrote down the mobile number from which the kidnapper had called, viz., 8305620342, on a piece of paper and gave it to PW-1. She gave the said number to the police.

When she came back from the police station, Om Prakash Yadav came to her and asked her not to tell the police anything and that Bobby would be freed by midnight. Later, Raja Yadav came to PW-1's house at about 11 o'clock in the night and told her that her brother, PW-2, and her other brother, Major Singh, had kidnapped her son in their greed for money. Raja Yadav had a sword in his hand and told PW-1 that he would cut the throats of her brothers if she asked him to. PW-1 told him not to do any such thing as her brothers would not do something like that.

7. On 28.03.2013 at about 3:30 pm, basing on the ransom calls received, PW-2 filed a report with the Gorakhpur Police Station. On that basis, FIR No. 273/13 (Ex. P35) was registered at 18:20 hours against unknown persons under Sections 364A and 365 IPC. Call details and IMEI data were obtained by the Investigating Officer (PW-16) from the Cyber Cell for mobile number 8305620342 from which the ransom calls had been made. PW-16 was informed by the Cyber Cell that the mobile phone handset with IMEI No. 358327028551270 was used to make the ransom calls and the handset with this IMEI number was also used with mobile number 9993135127, which was issued to Om Prakash Yadav.

On receiving this information, PW-16 went to the house of Om Prakash Yadav in Narmada Nagar, Gwarighat, on 29.03.2013. PW-16 took Rajesh Yadav to the police station and questioned him at 13:45 hours, whereupon he confessed to

having killed Ajit Pal, along with Raja Yadav. PW-16 recorded a Memorandum (Ex. P8) containing the confession of Rajesh Yadav, wherein he also stated that he would help recover Ajit Pal's body and the murder weapon. Rajesh Yadav and PW-16, along with witnesses, then went to Narmada Nagar. Rajesh Yadav led them to a well near Khandari Canal. Ajit Pal's body was found in the well.

It was stuffed in a white plastic sack. The body was identified as that of Ajit Pal by the witnesses present. Ajit Pal's throat was cut and there was hair entangled in his right-hand fingers. The police prepared a Panchayatnama (Ex. P2). It bears the signature of PW-2. The Naksha Panchayatnama (Ex. P3) was also signed by PW-2. Rajesh Yadav pointed out an empty liquor bottle lying at some distance.

The same was seized under a Property Seizure Memo (Ex. P10). An iron knife was also seized at the behest of Rajesh Yadav from the canal. There were blood-like stains on the knife. The seizure was effected in the presence of witnesses under a Property Seizure Memo (Ex. P11). Rajesh Yadav was then arrested on 29.03.2013 at 18:30 hours under an Arrest Memo (Ex. P36).

8. PW-16 again went to the house of Rajesh Yadav on 30.03.2013 to search for the SIM card of mobile number 8305620342, but it was not found. Ex. P37 is the House Search Panchnama in that regard. On 31.03.2013, Rajesh Yadav was again questioned in Gorakhpur Police Station in the presence of witnesses and his statement was recorded in a Memorandum (Ex. P15). He stated that the mobile phone from which the ransom calls were made was with his brother, Brijesh Yadav, and that he would help recover it.

On 31.03.2013, Brijesh Yadav was taken to Gorakhpur Police Station and questioned in the presence of witnesses. He made a statement, recorded in a Memorandum (Ex. P17), that he had hidden the mobile phones given by his brother, Rajesh Yadav, in a suitcase in his room. Brijesh took the police and witnesses to the house and a double-SIM mobile phone handset, with IMEI Nos. 358327028551278 and 358327028653272, was seized. Another mobile phone of Micromax company with SIM No. 9993135127 and IMEI Nos. 910549001346373 and 910549001754378 was also seized. The Seizure Memo is Ex. P19.

9. On 31.03.2015 at 15:00 hours, PW-16 questioned Raja Yadav in Gorakhpur Police Station in the presence of witnesses. He stated that he had hidden the blood-stained clothes worn by him at the time of the incident and would help recover the same. On the basis of this statement, recorded in a Memorandum (Ex. P16), Raja Yadav took the police and witnesses to his Dairy in Narmada Nagar, where his clothes, with blood-like stains, were seized under a Seizure

Memo (Ex. P18). Raja Yadav was arrested on 31.03.2013 under an Arrest Memo (Ex. P20) at 17:40 hours.

10. Om Prakash Yadav was taken to Gorakhpur Police Station on 05.04.2013 and questioned in the presence of witnesses. He stated that the blood-stained clothes worn by Rajesh Yadav at the time of the incident were hidden by him in a plastic bag under some hay in a room of his house. This statement was recorded in a Memorandum (Ex. P22) and on that basis, one black T-shirt, one black full lower and one light green Bermuda were found under the hay in a room of his house. The clothes were seized at 15:15 hours on 05.04.2013 under a Seizure Memo (Ex. P23). Om Prakash Yadav was arrested on 05.04.2013 at 15:30 hours under an Arrest Memo (Ex. P24).

11. The hair seized from the right fist of the deceased was sent for DNA analysis and for comparison with the blood samples of Rajesh Yadav and Raja Yadav. The DNA Test Report revealed that the said hair belonged to Rajesh Yadav. The autopsy of the body was done by Dr. Vivek Shrivastav (PW-7). His postmortem report (Ex. P7) indicated that the death had occurred 3 to 5 days prior to the examination and the cause of death was haemorrhagic shock which occurred due to the throat being cut prior to death. The postmortem examination was conducted by him at 10:15 hours on 30.03.2013.

12. According to the prosecution, the ransom calls were made by Raja Yadav by inserting the SIM card with mobile number 8305620342 into Om Prakash Yadav's mobile phone handset bearing IMEI No. 358327028551270. Thereafter, the said SIM card was destroyed and Om Prakash Yadav's SIM card with mobile number 9993135127 was inserted into the handset.

As per the prosecution, though the ransom calls were made during the morning hours on 28.03.2013, Ajit Pal was killed on the night of 26.03.2013 itself by Rajesh Yadav and Raja Yadav. They lured him by offering him alcohol, whereupon Raja Yadav and Ajit Pal drank whisky. Raja Yadav then caught hold of Ajit Pal and Rajesh Yadav cut his throat. Rajesh Yadav then got a white plastic sack and they hid the body in the well. This, in sum and substance, was the prosecution's case.

13. Before parting with the factual narrative, we may note that the prosecution tried to project Puran Singh (PW-3) as a witness to buttress a 'last seen' theory so as to build up a stronger case. This witness stated that his daughter was married to PW-2. He stated that he knew the accused also. He claimed that on 26.03.2013 at 6 pm, he had gone to Narmada Nagar to give a box of sweets to his daughter for Holi.

He further stated that, after leaving her house, he reached the railway crossing and met Raja Yadav, Rajesh Yadav and Ajit Pal. Ajit Pal greeted him and he asked Ajit Pal why he was not at home as it was past 9 pm. Ajit Pal told him that he was going to see the 'Holika' and left with the others. PW-3 stated that he then went home and was informed by his daughter on 28.03.2013 that Ajit Pal had been kidnapped and ransom calls had been made.

On 29.03.2013, his daughter informed him that Ajit Pal's dead body was found inside a well and that Raja Yadav, Rajesh Yadav, Brijesh Yadav and Om Prakash Yadav had helped recover it. PW-3 stated that he went for Ajay Pal's last rites on 30.03.2013 and when he met the Town Inspector at the crossing, he told him that he had met Ajit Pal along with Raja Yadav and Rajesh Yadav on 26.03.2013. This version of PW-3 was accepted by the Trial Court but was disbelieved by the High Court. The 'last seen' theory sought to be built up by the prosecution, therefore, fell to the ground.

14. A conspectus of the prosecution's case clearly reveals that it is poised entirely on circumstantial evidence as there was no eyewitness to the kidnapping and murder of Ajit Pal. In a case resting on circumstantial evidence, the prosecution must establish a chain of unbroken events unerringly pointing to the guilt of the accused and none other [See C. Chenga Reddy and others vs. State of A.P¹, Ramreddy Rajesh Khanna Reddy vs. State of A.P. 2, Majenderan Langeswaran vs. State (NCT of Delhi) and another 3 and Sharad Birdhichand Sarada vs. State of Maharashtra⁴]. As long back as in the year 1952, in Hanumant vs. State of Madhya Pradesh⁵, a 3-Judge Bench of this Court observed as under:

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved.

In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.' Again, in Padala Veera Reddy vs. State of Andhra Pradesh and others⁶, this Court affirmed that when a case rests solely upon circumstantial evidence, such evidence must satisfy the following tests:

'1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

15. Applying these standards presently, we find that the prosecution utterly failed to pass muster in establishing its case. There are cavernous gaps in the evidence that the prosecution would offer as an 'unbroken chain unerringly pointing to the guilt of the appellants'. Discrepancies galore in the prosecution's case tear asunder the fabric of its purported version as to how events unfolded.

Oftentimes, Courts find that reckless overzealousness and unbridled fervour coupled with scant regard for due procedures and practices on the part of the police, in picking upon those whom they perceive to be the guilty party and then building up a case against them, accomplishes the direct opposite of what they seek to achieve, by exposing gaping holes and weak links in the chain of evidence that they ultimately offer, as is the situation now.

16. To begin with, there is no clarity as to the time at which Ajit Pal went missing. Ex. P1, being the 'missing person' report lodged by Rajwant Kaur (PW-1), recorded that Ajit Pal left the house on 26.03.2013 at 9 o'clock and went somewhere and that he was searched for but was not found. Significantly, there is no mention therein of whether it was at 9 am or 9 pm that Ajit Pal had left the house or that it was to see the 'Holika'. PW-6 is the Chief Constable at Gorakhpur Police Station who recorded Ex. P1 on 27.03.2013.

He stated that PW-1 reported that her son, Ajit Pal, had left the house on 26.03.2013 at 9 o'clock without telling anyone and he had not been found despite their search. There is a mention of the time as 9 o'clock, without specifying whether it was in the morning or night and again, no mention of the 'Holika'. However, FIR No.273/13 (Ex. P35), registered on 28.03.2013 at 18:20 hours, recorded that Ajit Pal had left the house on 26.03.2013 at '9 in the morning' without telling anyone and that he was searched for everywhere but was not found.

Again, there is no mention therein of his having gone to see the Holika, but there is now clear ambiguity whether Ajit Pal went missing on 26.03.2013 at 9 o'clock

in the morning itself or at 9 o'clock at night. Further, the prosecution would have it that the kidnappers were not even certain as to the ransom amount that they wanted. Several varying figures find mention in the prosecution's case. If the very motive for the offence was to collect ransom, it is doubtful whether the kidnappers would have been so equivocal about their demand.

17. Adding to the confusion, Rajwant Kaur (PW-1) stated during her cross-examination that the person on the phone who made the ransom call was a stranger and then went on to add that she had recognised the voice but as her child's life was in danger, she did not tell the police. She further stated that she did not say that she had recognized the voice until the end. She also admitted that she did not even mention in her examination-in-chief that she had recognised the voice. Compounding matters further, she stated that the police had used tracking dogs on 29.03.2013 but denied the suggestion that the dogs had detected the body in the well.

According to her, the dogs were used in the evening after the body was taken out from the well in the afternoon. Thereafter, she said that the tracking dogs had gone to the well and washing area at 7-8 o'clock but she did not remember on which date it was, but it was after the body was found. Similarly, Jitendra Singh (PW-8), a close relation of PW-1 and a key witness to the prosecution's seizure memos, stated that he had heard of sniffer dogs being used between 28.03.2013 and 29.03.2013 but it was not in his presence.

As to why sniffer/tracking dogs would be pressed into service after the police found the dead body, the murder weapon and other material objects is not comprehensible. Notably, the Investigating Officer (PW-16) did not even mention the use of sniffer/tracking dogs during investigation. This suppression, be it for whatever reason, does not reflect well upon the prosecution.

18. These being glaring disparities in the very foundation of the case, things get progressively worse. Saidutt Bohare (PW-15), the Nodal Officer from Bharti Airtel Limited, who furnished the call data to the police, said that he sent those details by email to the Police Superintendent's Office when he was asked. He produced a copy of the email, containing the call details sent to the Police Superintendent's office (Ex. P31). He stated that the subscriber of mobile number 9993135127 was Om Prakash, son of Buletan Yadav, and furnished the call details and IMEI data.

The call data statement (Ex. P31) reveals that it was made available to the police at 18:05 hours on 28.03.2013. It was only thereafter that the FIR was registered at 18:20 hours. However, though the call data statement was sufficient to link Om Prakash Yadav with the ransom calls, the police chose to mention in the FIR

that the accused was 'Unknown'. Further, if Ex. P31 statement pointed to the involvement of Om Prakash Yadav, as claimed by the Investigating Officer (PW-16), there is no explanation forthcoming as to why the police picked up Rajesh Yadav first.

19. Further, and most crucial of all, there is no clarity as to when the appellants were actually taken into 'custody' by the police. PW-2 stated in his examination-in-chief that the police caught Rajesh Yadav and took him to Gorakhpur Police Station during the afternoon hours of 28.03.2013 itself. During his cross-examination, PW-2 again asserted that the police did not take Om Prakash Yadav on 28.03.2013 but they took Rajesh Yadav and Raja Yadav.

PW-2 categorically denied the suggestion that the police did not take Raja Yadav and Rajesh Yadav on 28.03.2013 and that they took them on 29.03.2013. Shiv Prakash (PW-4), a relation of the accused, also stated that the Gorakhpur police had taken him along with Raja Yadav, Brijesh Yadav, Om Prakash Yadav and Rajesh Yadav and held them in the police station on the night of 28.03.2013 itself, where they were beaten.

He was declared hostile and cross-examined by the prosecution. He again claimed that the police had taken them on the night of 28.03.2013. He stated that he was released on the 5th from Gorakhpur Police Station but he did not make a complaint due to fear, as the police had beaten him a lot.

20. Princy Thakur (DW-2) stated that she used to visit Om Prakash Yadav's house since a long time as her mother used to work for them. She claimed that the Gorakhpur police arrested Raja Yadav and Rajesh Yadav at 3-4 pm on 27.03.2013 itself and took them for questioning to the police station. She stated that, at about 8-9 pm on that day, the police took her also to Gorakhpur Police Station for questioning. She alleged that the police seized all their mobiles. According to her, the police beat Raja Yadav and Rajesh Yadav a lot. She further stated that the police pulled out Rajesh Yadav's hair and that the three of them were questioned all day and night.

She further claimed that, on 30.03.2013, the police brought Om Prakash Yadav to the police station at 2-3 o'clock. She asserted that the police beat Om Prakash Yadav a lot and that she saw it. Om Prakash was stated to have fallen down unconscious and two policemen, Rajesh Nag and Jugal Kishore, took him to Bhandari Hospital. She stated that, when she was released on 01.04.2013, she went to see Om Prakash Yadav at Bhandari Hospital and there were four policemen there, guarding him to ensure that he did not run away.

She said that she used to go to give food every day to Om Prakash Yadav and the police were present all day and all night. She said that the police seized her mobile and she got it back through the Court on handing over a receipt. The evidence of this defence witness remained practically unshaken during her cross-examination. The prosecution conveniently chose to ignore this witness altogether and made no mention of her whatsoever.

21. Even if the deposition of DW-2 is discounted, going by the evidence of the prosecution's own witnesses, viz., PW-2 and PW-4, Rajesh Yadav and Raja Yadav were taken by the police on 28.03.2013 itself and not on 29.03.2013, as claimed by the prosecution. However, their arrests were shown much later. Rajesh Yadav was arrested only on 29.03.2013 at 6:30pm, while Raja Yadav was arrested on 31.03.2013 at 5:40 pm. Om Prakash Yadav was arrested much later on 05.04.2013 at 3:30 pm.

Most crucial is the fact that the Investigating Officer (PW-16) chose to examine Rajesh Yadav at 1:45 pm on 29.03.2013 and record his confession without even arresting him, whereby he would have stood 'accused of an offence'. It is on the strength of this confession that the police and the witnesses allegedly went with Rajesh Yadav to the well, wherefrom the dead body of Ajit Pal was taken out. In effect, Rajesh Yadav was not even 'accused of any offence' at the time he made a confession and allegedly helped the police find the dead body.

Similarly, Raja Yadav was not arrested by the time his confession was recorded and he was not 'accused of any offence' when he allegedly helped the police in seizing his blood-stained clothes. In effect, they were not in the 'custody of the police' at that time. In that situation, the vital question that would arise is as to the legal sanctity of the procedure adopted by the police and, in consequence, the value to be attached to the seizures made by them on the strength of such so-called confessions.

22. Section 26 of the Indian Evidence Act, 1872 (for brevity, 'the Evidence Act'), provides that no confession made by any person whilst he is in the custody of a police officer shall be proved against such person, unless it is made in the immediate presence of a Magistrate. Section 27, thereafter, is in the nature of an exception to Section 26 of the Evidence Act.

It states that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Therefore, it is essential under Section 27 of the Evidence Act that the person concerned must be 'accused of an offence' and being in the 'custody of a police

officer', he or she must give information leading to the discovery of a fact and so much of that information, whether it amounts to a confession or not, that relates distinctly to the fact discovered, may be proved against him.

In effect, both aspects, viz, being in 'the custody of a police officer' and being 'accused of an offence', are indispensable pre-requisites to render a confession made to the police admissible to a limited extent, by bringing into play the exception postulated under Section 27 of the Evidence Act.

23. In this regard, reference may be made to *Bodhraj alias Bodha and others vs. State of Jammu & Kashmir*⁷, wherein this Court had observed that the requirement of 'police custody' is productive of extremely anomalous results and may lead to the exclusion of valuable evidence in cases where a person, after committing a crime meets a police officer and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him, and he is subsequently taken into custody and becomes an 'accused'.

This Court pointed out that this information, which would otherwise be admissible, becomes inadmissible under Section 26 of the Evidence Act as it did not come from a person in the 'custody of a police officer' or rather, came from a person not in the 'custody of a police officer'. In other words, the exact information given by the accused 'while in custody', which led to recovery of the articles can be proved. It was noted that this doctrine is founded on the principle that if any fact is discovered as a search was made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true.

24. Thereafter, in *State of Karnataka vs. David Rozario and another*⁸, this Court held that information which is otherwise admissible under Section 27 of the Evidence Act would become inadmissible, if it did not come from a person in the 'custody of a police officer' or came from a person 'not in the custody of a police officer'. It was further held that what is admissible is the information and not the opinion formed on it by the police officer and, in other words, the exact information given by the accused while in 'custody' which led to recovery of the articles has to be proved. The two essential requirements, per this Court, are that:

- (i) the person giving the information must be 'accused of an offence'; and
- (ii) he must be in 'police custody'.

25. Again, in *Ashish Jain vs. Makrand Singh and others*⁹, this Court held that once a confessional statement of the accused is found, on facts, to be involuntary, it would be hit by Article 20(3) of the Constitution of India,

rendering such a confession inadmissible. It was further noted that there is an embargo on accepting self-incriminatory evidence, but if it leads to the recovery of material objects in relation to a crime, it is most often taken to hold evidentiary value as per the circumstances of each case. This Court further cautioned that if such a statement is made under undue pressure and compulsion from the Investigating Officer, the evidentiary value of such a statement leading to the recovery is nullified.

26. More recently, in *Boby vs. State of Kerala*¹⁰, this Court referred to the decision of the Privy Council in *Pulukuri Kotayya vs. King Emperor*¹¹, wherein Section 27 of the Evidence Act had been considered at length and it was noted that Section 27 provides an exception to the prohibition imposed by the preceding provisions and enables certain statements made by an 'accused' in 'police custody' to be proved.

It was observed that the condition necessary to bring Section 27 into operation is that the discovery of a fact in consequence of information received from a person 'accused of any offence' in the 'custody of a police officer' must be deposited to, and thereupon so much of the information, as relates distinctly to the fact thereby discovered, may be proved. It was observed that normally, Section 27 is brought into operation when a person in 'police custody' produces from some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime, of which the informant is accused.

However, the Privy Council concluded that the exception to Section 26 added by Section 27 should not be held to nullify the substance of the provision and it would be fallacious to treat the 'fact discovered' as equivalent to the object produced; the 'fact discovered' embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.

By way of example, it was elucidated that information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; as knives were discovered many years ago, but if it leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. Noting this principle, this Court observed that Section 27 of the Evidence Act requires that the 'fact discovered' embraces the place from which the object is produced and the knowledge of the 'accused' as to this and the information given must relate distinctly to the said fact.

27. In the case on hand, though Rajesh Yadav was taken to the police station, be it on 29.03.2013 or even earlier, he could not be said to be in 'police custody' till he was arrested at 18:30 hours on 29.03.2013, as he did not figure as an 'accused' in the FIR and was not 'accused of any offence' till his arrest.

Therefore, it was his arrest which resulted in actual 'police custody', and the confession made by him, before such arrest and prior to his being 'accused of any offence', would be directly hit by Section 26 of the Evidence Act and there is no possibility of applying the exception under Section 27 to any information given by him in the course of such confession, even if it may have led to the discovery of any fact.

In consequence, the purported discovery of the dead body, the murder weapon and the other material objects, even if it was at the behest of Rajesh Yadav, cannot be proved against him, as he was not 'accused of any offence' and was not in 'police custody' at the point of time he allegedly made a confession.

So too would be the case with Raja Yadav and Om Prakash Yadav, as they also were not named as the 'accused' in the FIR and were not 'accused of any offence' till they were arrested and taken into 'police custody', well after the recording of their confessions and the alleged seizures based thereon. Needless to state, this lapse on the part of the police is fatal to the prosecution's case, as it essentially turned upon the 'recoveries' made at the behest of the appellants, purportedly under Section 27 of the Evidence Act.

28. That apart, the manner in which the Investigating Officer (PW-16) went about drawing up the proceedings forms an important issue in itself and it is equally debilitating to the prosecution's case. In *Yakub Abdul Razak Memon vs. State of Maharashtra through CBI, Bombay*¹², this Court noted that the primary intention behind the 'panchnama' is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party.

It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an article. It was pointed out that a panchnama can be used as corroborative evidence in the Court when the respectable person who is a witness thereto gives evidence in the Court of law under Section 157 of the Evidence Act.

This Court noted that Section 100(4) to Section 100(8) Cr.P.C. stipulate the procedure with regard to search in the presence of two or more respectable and independent persons, preferably from the same locality, so as to build confidence and a feeling of safety and security amongst the public. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchnama:

(a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

(b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

(c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

(d) The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

(e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

(f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.

(g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.

(h) If a search is conducted without warrant of court Under Section 165 of the Code, the I.O. must record reasons and a search memo should be issued.

It was held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C.

This Court concluded, by stating that the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.

29. Recently, in *Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh*¹³, a 3-Judge Bench of this Court observed that the requirement of law that needs to be fulfilled before accepting the evidence of discovery is by proving the contents of the panchnama and the Investigating Officer, in his deposition, is obliged in law to prove the contents of the panchnama. It was further observed that it is only if the Investigating Officer has successfully proved the contents of the discovery panchnama in accordance with law that the prosecution would be justified in relying upon such evidence and the Trial Court may also accept the same.

It was held that, in order to enable the Court to safely rely upon the evidence of the Investigating Officer, it is necessary that the exact words attributed to the accused, as the statement made by him, be brought on record and, for this purpose, the Investigating Officer is obliged to depose in his evidence the exact statement and not merely say that the discovery panchnama of the weapon of the offence was drawn up as the accused was willing to take it out from a particular place.

30. In *Khet Singh vs. Union of India*¹⁴, this Court held that even if there is a procedural illegality in conducting the search and seizure, the evidence collected thereby would not become inadmissible and the Court would consider all the circumstances to find out whether any serious prejudice has been caused to the accused.

However, this Court pointed out that if the search and seizure were in complete defiance of the law and procedure and there was any possibility of the evidence collected having been tampered with or interpolated during the course of such search and seizure, then that evidence could not be admitted. Though these observations were made in the context of a search and seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985, they would have relevance generally.

31. Tested against this backdrop, the manner and method in which the panchnamas and memos were prepared in the case on hand leave the prosecution high and dry. For instance, the *Naksha Panchnama* (Ex. P3) dated 29.03.2013 records the names of five witnesses, including PW-2 and PW-8, and states that the witnesses inspected the body of deceased *Ajit Pal @ Bobby*; that there was a big wound on the right side of the neck of the deceased; that, in the opinion of

the panch witnesses, the deceased was murdered by Rajesh Yadav and Raja Yadav by cutting his throat with a knife; that his body was stuffed in a sack; and that the sack was thrown in a well.

It then goes on to record the opinion of the Investigating Officer (PW-16) wherein, after noting the factual aspects, he stated that Ajit Pal was murdered by Rajesh Yadav and Raja Yadav by cutting his throat with a knife. Notably, the narrative is not that of the panch witnesses but mostly of PW-16 himself and the panch witnesses merely signed the panchnama. Akin thereto, the Crime Details Form (Ex. P13) notes that the scene of the crime was visited on 29.03.2013 at 15:15 hours and records that, 15 metres from the Khandari Canal, an old well is situated; that there are bushes growing around the well; that there was a body inside a white sack which was floating in the water in the well; that the width of the well was 2 metres 70 cms.; that the well was 6 metres deep; and that there was 1 metre water in the well and 5 metres was empty.

Significantly, though the Crime Details Form notes that two panch witnesses were present, there is no narrative by them and they simply signed the form. The same is the position with the Crime Details Form (Ex. P14), relating to the finding of blood on the walls of the washing area and the floor; black plastic slippers; and an empty bottle of liquor.

The same panch witnesses find mention in this Crime Detail Form and they affixed their signatures but again, it is not their narrative and there is no recording of how they went about finding these objects. Further, the form straightaway records the opinion that Rajesh Yadav and Raja Yadav had murdered Ajit Pal, put his body in a plastic sack and threw it into the well.

32. Property Seizure Memos (Ex. P18 and Ex. P23), relating to the seizure of the blood-stained clothes of Rajesh Yadav and Raja Yadav respectively, are drafted likewise wherein the witnesses, Bambam (PW-9) and Surjeet Singh, are named but there is no narrative on their part as to how they were led and assisted by someone to find these objects.

On the same lines, Property Seizure Memo (Ex. P9), relating to the seizure of the blood-stained soil, controlled soil and the plastic slippers; Property Seizure Memo (Ex. P10), relating to seizure of the liquor bottle; Property Seizure Memo (Ex. P12), relating to seizure of the body of the deceased and his clothes along with the hair found in his right fist; Property Seizure Memo (Ex. P11), relating to seizure of the murder weapon; and Property Seizure Memo (Ex. P19) relating to seizure of the two mobile phones; also reflect the same style of recording.

Witnesses to the panchnamas and the seizures acted as mere attestors to the documents and did not disclose in their own words as to how these objects were discovered, i.e., at whose instance and how. Ergo, no lawful validity attaches to these proceedings recorded by the police in the context of collection of all this evidence.

33. DNA evidence was also relied upon by the prosecution, by projecting a scenario that Ajit Pal had struggled with his assailant and in the course of that scuffle, he managed to pull out some hair from the head of his assailant and they remained in his hand till the discovery of his body. DNA analysis of that hair proved that they were those of Rajesh Yadav. However, this story is found to be bereft of logic. According to Raja Yadav's Arrest Memo (Ex. P20), he was 5.8" in height and the prosecution would have it that he caught hold of Ajit Pal, a 15-year-old boy, who was 5.4" in height from behind and Rajesh Yadav, who was 5.7" in height, as per his Arrest Memo (Ex. P36), cut his throat.

The possibility of Ajit Pal, held by a much taller Raja Yadav, managing to get his hands on Rajesh Yadav's head, who was also much taller than him, whereby he could have plucked out any hair is inherently improbable. This scenario does not lend itself to credibility and seems to have been concocted so that Rajesh Yadav's hair would be conveniently available for DNA analysis to corroborate the prosecution's case.

Further, as there is a doubt as to when Rajesh Yadav was taken by the police and as to whether his hair could have been pulled out by the police while he was in their control, the possibility of such evidence being introduced by the police themselves cannot be ruled out. In *Manoj and others vs. State of Madhya Pradesh*¹⁵, a 3-Judge Bench of this Court refused to rely on DNA evidence, inter alia, as the genuineness of its recovery was suspect. Presently also, as the source and origin of the DNA evidence, viz., the hair, is rendered suspect, the end result of that DNA analysis serves no real purpose in establishing the prosecution's case.

34. The proverbial last nails in the coffin of the prosecution's case, if at all needed, are the shocking lapses and the slipshod investigation on the part of the police. It is on record that when the Investigating Officer (PW-16) undertook the first search of Om Prakash Yadav's house under Ex. P-37 Panchnama, nothing was found. However, a later search with the aid of Brijesh Yadav led to the seizure of two mobile phones from a trunk in one of the rooms of Om Prakash Yadav's house.

As to why these phones were not found during the first search is not explained. That apart, Shaival @ Bambam (PW-9), a witness to the seizure of the phones,

claimed that there were no SIM cards in the mobiles but candidly admitted that they did not open the mobiles and look inside. He said that they did not try to operate the mobiles or see the numbers inside and that both the phones were turned off. The self-contradictory deposition of this witness does not aid the dubious investigative process adopted by the police.

As regards the call data and the ransom calls, we may note that Santosh Jadhav, Assistant Nodal Officer, Reliance Communication, was examined as PW-17 and spoke of the call data of mobile number 8305620342 from which the ransom calls were made. According to him, the SIM card with the said mobile number was given to one Bhuraji, son of Deepu, whose address was House No. 433, Sanjay Gandhi Ward, Tehsil Jabalpur. He produced Bhuraji's 'Customer Application Form' along with his attached Election ID card.

These documents were marked as Ex. D6. The call data of 28.03.2013 showed that this SIM card was used on the mobile handset with IMEI No. 358327028551270. He marked in evidence Ex. P35 in that regard. Therefore, the mobile number from which ransom calls were made was in the name of one Bhuraji, s/o Deepu, and his address was available. However, the police did not even attempt to contact Bhuraji or examine him to find out how and why his SIM card was used for making the ransom calls.

Even more startling is the fact that, though PW-17 placed on record actual proof of the allotment of this mobile number to Bhuraji (Ex. D6), no such steps were taken by the police to establish the link between Om Prakash Yadav and mobile number 9993135127, which was attributed to him. PW-15 baldly stated that the said mobile number was allotted to Om Prakash Yadav but did not mark in evidence any document in proof thereof. Surprisingly, he had stated in his deposition that he had brought the certified copy of the application form and the ID used when this SIM card was allotted to the subscriber, Om Prakash Yadav, but the same were not marked.

In effect, no palpable connection is established between the said mobile number and Om Prakash Yadav. In the absence of such a tangible link, the call data report (Ex. P31) and the contents thereof are practically useless in establishing the prosecution's case that the ransom calls were made from Om Prakash Yadav's mobile phone handset by inserting Bhuraji's SIM card, with mobile number 8305620342, therein.

35. Another notable feature is that PW-2, during his crossexamination, came up with a different story as to what transpired during those crucial days. He stated that on 28.03.2013, when Om Prakash Yadav and he went to the Gurudwara and while he was there, Om Prakash Yadav gave him a missed call. He claimed that

he called him back at about 2 pm and Om Prakash Yadav told him that Bobby was there and had taken gutkha and left. PW-2 claimed that he told his sister not to worry and that Bobby was with Om Prakash Yadav.

He, however, went on to state that when they reached the police station at 3:30 pm, he did not tell the police about Om Prakash Yadav calling and speaking to him. He claimed that, on 28.03.2013, Om Prakash Yadav threatened that he would kill him and burn down his house. According to PW-2, he had not recognised the voice of the caller who called for ransom.

He further stated that the police did not call him or PW-1 when they took Rajesh Yadav and Raja Yadav. PW-2 also said that when they questioned him. i.e., PW-2, on 28.03.2013 at about 5 or 6 in the evening, he told them everything about who had called, etc. There is, again, total suppression by the prosecution of this new twist in the tale and how it could possibly fit in with its version projected before the Court.

36. Lastly, Dr. Vivek Shrivastav (PW-7), who conducted the postmortem examination, stated that semi-digested food was found in the stomach of the deceased and it would have been consumed less than six hours prior to death. According to him, it could have been 30 minutes or 1 hour. He stated that if alcohol is drunk with food and death occurs within 1 hour thereafter, then it is possible for the semi-digested food to smell of alcohol. He admitted that he did not find any such smell of alcohol. His testimony weakens the prosecution's claim that Ajit Pal consumed whiskey just before he was killed.

37. Before parting with the case with our verdict, we may note with deep and profound concern the disappointing standards of police investigation that seem to be the invariable norm. As long back as in the year 2003, the Report of Dr. Justice V.S.Malimath's 'Committee on Reforms of Criminal Justice System' had recorded thus:

'The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect.

Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are

apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. The standard of police investigation in India remains poor and there is considerable room for improvement.

The Bihar Police Commission (1961) noted with dismay that "during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation". Besides inefficiency, the members of public complained of rudeness, intimidation, suppression of evidence, concoction of evidence and malicious padding of cases.'

38. Echoing the same sentiment in its Report No.239 in March, 2012, the Law Commission of India observed that the principal causes of low rate of conviction in our country, inter alia, included inept, unscientific investigation by the police and lack of proper coordination between police and prosecution machinery. Despite passage of considerable time since these gloomy insights, we are dismayed to say that they remain sadly true even to this day. This is a case in point. A young boy in the first flush of youth was cruelly done to death and the wrongdoers necessarily had to be brought to book for the injustice done to him and his family.

However, the manner in which the police tailored their investigation, with complete indifference to the essential norms in proceeding against the accused and in gathering evidence; leaving important leads unchecked and glossing over other leads that did not suit the story that they had conceived; and, ultimately, in failing to present a cogent, conceivable and fool-proof chain of events pointing to the guilt of the appellants, with no possibility of any other hypothesis, leaves us with no option but to extend the benefit of doubt to the appellants.

The higher principle of 'proof beyond reasonable doubt' and more so, in a case built on circumstantial evidence, would have to prevail and be given priority. It is high time, perhaps, that a consistent and dependable code of investigation is devised with a mandatory and detailed procedure for the police to implement and abide by during the course of their investigation so that the guilty do not walk free on technicalities, as they do in most cases in our country. We need say no more.

39. It is indeed perplexing that, despite the innumerable weak links and loopholes in the prosecution's case, the Trial Court as well as the High Court were not only inclined to accept the same at face value but went to the extent of imposing and sustaining capital punishment on Rajesh Yadav and Raja Yadav.

No valid and acceptable reasons were put forth as to why this case qualified as the 'rarest of rare cases', warranting such drastic punishment. Per contra, we find that the yawning infirmities and gaps in the chain of circumstantial evidence in this case warrant acquittal of the appellants by giving them the benefit of doubt.

The degree of proof required to hold them guilty beyond reasonable doubt, on the strength of circumstantial evidence, is clearly not established.

On the above analysis, we allow the appeals and set aside the conviction and sentences of all the three appellants on all counts.

They shall be set at liberty forthwith, if their continued incarceration is not validly required in connection with any other case. Fine amounts paid by them, if any, shall be refunded within eight weeks from today.

.....J. [B.R. Gavai]

.....J. [J.B. Pardiwala]

.....J. [Sanjay Kumar]

New Delhi

September 21, 2023.

1 (1996) 10 SCC 193

2 (2006) 10 SCC 172

3 (2013) 7 SCC 192

4 (1984) 4 SCC 116

5 (1952) 2 SCC 71

6 1989 Supp (2) SCC 706

7 (2002) 8 SCC 45

8 (2002) 7 SCC 728

9 (2019) 3 SCC 770

10 Criminal Appeal No. 1439 of 2009, decided on 12.01.2023.

11 AIR 1947 Privy Council 67

12 (2013) 13 SCC 1

13 Criminal Appeal Nos. 64-65 of 2022, decided on 13.10.2022 = 2022 SCC
OnLine SC 1396

14 (2002) 4 SCC 380

15 (2023) 2 SCC 353

IN THE SUPREME COURT OF INDIA

**Batliboi Environmental Engineers Ltd.
Vs.
Hindustan Petroleum Corporation Limited and Anr.**

Civil Appeal No. 1968 of 2012

HEADNOTE – Explains scope of judicial interference in arbitral awards

JUDGMENT

Sanjiv Khanna, J.

1. This appeal by way of special leave by Batliboi Environmental Engineers Limited¹ takes exception to the judgment dated 02.11.2007, whereby the Division Bench of the High Court of Judicature at Bombay allowed the appeal² filed by Hindustan Petroleum Corporation Limited³ under Section 37 of the Arbitration and Conciliation Act, 1996, and thereby has set aside the arbitral award dated 23.03.1999.

2. On acceptance of tender and in terms of the letter of intent dated 27.02.1992, HPCL had awarded to BEEL the turnkey contract for detailed engineering including civil and structural design, supply and erection, testing and commissioning of 23 MLD capacity Sewage Water Reclamation Plant in Mahul Refinery area. The contract value was Rs.574.35 lakhs. The contract period was 18 months from the date of letter of intent, and accordingly the work was to be completed by 28.08.1993.

There was delay in completion. On written requests/applications made by BEEL, the time for completion was extended on two occasions. Three revisions were also issued by HPCL. The last revision dated 20.09.1994 had extended the period for completion from 26.09.1994 by 10 months beginning from the date on which approval of electrical items was accorded by HPCL. BEEL carried on the work till 30.03.1996. Thereafter, BEEL abandoned the work. It is an accepted position that as on 30.03.1996, 80% of the work was complete.

3. On 04.07.1996, BEEL made a formal claim to HPCL for breach of contract on account of delay in execution, causing extra expenses and losses. By the letter dated 16.05.1997, BEEL sought an advance payment of Rs.50 lakhs to enable them to resume work, and simultaneously expressed its desire to resolve the dispute through conciliation.

BEEL by the same letter also invoked the arbitration clause in the contract, if the proposal as given by BEEL was unacceptable to HPCL. HPCL by the letter dated 05.05.1997 refused to make payment, and relying on the terms of the contract had impressed upon BEEL to resume and complete the remaining work, even if the matter was to proceed for arbitration. BEEL did not agree and resume work.

4. The General Manager (Project), Mahul Refinery, HPCL, appointed Mr. K. Narayanan as the sole arbitrator to adjudicate upon the disputes and differences in the execution of the contract. Claim was filed by BEEL and reply/counter claim was filed by HPCL, to which rejoinder with supporting documents and sur-rejoinders were filed. In all about 14 hearings were held before the arbitral tribunal between the period 12.03.1998 and 07.01.1999 and oral arguments were addressed. Ocular evidence was not led. The learned arbitrator had conducted a site inspection on 24.12.1997.

5. The arbitral award dated 23.03.1999, substantially allows the Claims Nos. 1,2, and 4 of the BEEL. The relevant portion of the award dealing with the claims of the BEEL, reads:

"A. Claims of the Claimants:

Claim No.1 - Compensation for loss of Overhead and profit and also profitability: Rs.3,38,38,460.00

The claim is forwards loss of Overheads and profit/profitability calculated on the basis of 48 months delay as of 27.08.1997. The Claimants have considered 10% of the Contract value towards Overheads and another 10% towards profit/profitability to arrive at the above figure, after taking into account the same percentages from the payments already received by them.

My finding is that the Owner Respondents are fully responsible for the huge delay that occurred by not taking proper and timely action in removing the various impediments and obstacles that stood in the way of completing the project in the given span of 18 months. The party had been tied down to a project, which was allowed to drift aimlessly, with the owner-respondents showing hardly any interest in completing it in time.

Even the basic approval for the Electrical scheme, with numerous revisions was kept pending, till the end without any decision. The Claimants could not have expected to complete the project without these clearances. The Respondents have thus evaded their own responsibilities and committed breach of contractual obligations.

As admitted by the Respondents, even the arrangement with MCGB for the supply of Sewage water for purification has not yet been finalised. This, as advised by the Respondents, is awaiting the intervention of the Chief Minister. It is any body's guess when this arrangement will be firmed up the necessary pumping station and underground pipelines etc. will be ready so that sewage water will flow to the plant being built for purification by the claimant. This is proof that the Respondents were not serious enough in implementing the project.

For reasons given above, I consider that the claimants are legitimately entitled for compensation towards both loss of Overheads and profit/profitability. In arriving at the compensation, the period upto 30.03.1996, when the claimants discontinued the work is being considered. The total period works out to 49 months. The original contract period being 18 months, the extended period comes to 31 months. The claimants had stated in their claim statement that they had provided for 22 months overheads in their estimate.

I am allowing 3 months for internal administrative process of the Owner-Respondents and for unforeseen delays such as strike, red alerts etc. I also consider 10% of contract value towards loss of overheads and 10% towards loss of profit/profitability as reasonable. On these (sic) basis, the Compensation works out to Rs.78,68,833.00 towards loss of overheads and an equal amount of Rs.78,68,833.00 towards loss of profit/profitability, the total being Rs.1,57,37,666.00 after taking into account the same percentage from payments already received by them for the work done. I award this amount to the Claimants.

While awarding the above compensation, the existence of the means to mitigate the loss has been considered. According to me, the only means available to the claimants, was to work on Sundays and Holidays, to make up for the lost time to some extent, which was denied by the Respondents except for a brief period at the very end. This brief relaxation was not of much significance in determining the compensation payable to the claimants.

**Claim No.2 - Compensation for idle machinery and equipment:
Rs.84,59,615.00**

This claim is for machinery and equipment deployed in the execution of this contract, but had to idle for large part of the time, due to extended contract period. I have inspected the site. I am of the opinion that there is substance in the claim. After due consideration of all aspects, I award an amount of Rs.50,000.00 per month for a period of 24 months which comes to Rs.12,00,000.00

Claim No.3 - Compensation for losses incurred due to increased cost of Materials and Labour: Rs.26,89,638.00

Even though the escalation in cost of material and labour is a normal feature when Engineering Contracts such as this gets unduly delayed, since escalation is not permitted as per the contract the claim stands rejected totally.

Claim No.4 - Compensation for carrying out Extra Work: Rs.19,00,225.00

The claim consists of the following 4 items:

(i)	Transportation of excavated earth	Rs.12,05,000.00
(ii)	Dewatering charges incurred during delayed period	Rs.5,62,570.00
(iii)	Shifting charges for material	Rs.1,01,405.00
(iv)	Shifting charges for Filter media	Rs.31,250.00

The above jobs have been carried out in relation to the main contract, but have figured as extra items due to certain omissions and commissions by the owner-respondents. The claimants have compelled and produced vouchers and documents in support of their claim. I am not satisfied with all the details furnished. Therefore, against the above claim, I awarded to the extent I am satisfied with the documentation, as under:

Item No.I	Rs.1,20,000.00 towards transportation of excavated earth dumped by other contractors in the work site, prior to award of contract but after submission of the offer.
Item No.II	Nil amount
Item No.III	Rs.50,000.00 towards shifting of materials manually because of non-availability of approach to site for vehicle.
Item No.IV	Rs.25,000.00 towards charges for shifting the Filter Media Several times for paucity of space.

Total Claim amount awarded: Rs.1,95,000.00 against Rs.19,00,225.00

Claim No.5 - Cost of repair and rectification: Amount to be assessed. No award on this as this refers to future course of action when project work is resumed.

INTEREST: The Claimants are also entitled to 18% interest per annum on all the claims awarded, effective from 16.05.1997, the date on which the notice invoking Arbitration clause was served on the Respondents (date on which cause of action arose) till the date of payment.

BANK GUARANTEE: The Claimants have specifically prayed for reduction of the performance Bank Guarantee amount by 50%. In view of the fact that about 80% of the work has been completed, and (in) view (of) (sic) the huge delay that has occurred the amount shall be reduced by 50%."

6. The award dated 23.03.1999 dismisses the counter claim of HPCL for liquidated damages of Rs.57.40 lakhs, on the ground that the delay was caused by omissions and commissions of HPCL. Claims by HPCL for rectification/rehabilitation cost of Rs.102.05 lakhs, costs of balance work of Rs.160 lakhs and de-watering cost of Rs.9 lakhs were denied on the ground that they relate to future works and therefore, would not fall within the ambit of arbitration in question.

7. We have intentionally quoted the entire findings and reasoning accorded by the learned arbitrator, while allowing the Claim Nos. 1,2 and 4 of BEEL. The first egregious and obvious flaw in the award is, the omnibus finding and conclusion that HPCL (referred to as the owner and the respondent in the quoted portion of the award) was fully responsible for the inordinate delay that had occurred by not taking proper and timely action in removal of various impediments and obstacles that stood in the way of completing the project within the stipulated period of 18 months.

This finding, in our opinion, is bereft of analysis and examination of facts and contentions. The relevant and material facts and the respective stances of the parties are neither decipherable nor evaluated and no reason has been given for arriving at the conclusion. A conclusion without any discussion and reasons, is non-compliant and violates the mandate of sub - section (3) of Section 31 of the A& C Act5, an aspect we would examine subsequently.

8. The second patent error relates to the computation and award of 10% of the contract value towards loss of overheads and another 10% towards loss of profits/profitability. The two amounts have been quantified at Rs.78,68,833/- each. Thus, Rs.1,57,37,666/- has been awarded and held as payable by HPCL to BEEL. The award is deficient being completely silent as to the method and the manner in which the arbitral tribunal has computed the figures.

Therefore, it leaves us and the parties to wonder the basis for awarding and computing the amounts. We are not commenting or examining the merits of the

computation, but complete absence of any justification and reason to allow the claim and quantification of the sum awarded. We would subsequently examine the chart furnished by BEEL in support of the said computation, albeit at this stage we would like to highlight the apparent contradiction in the award, which is the third ground to uphold the decision of the Division Bench of the High Court.

9. We begin our substantiation of the third ground, by referring to the first paragraph of the award quoted above, under the heading 'Claim No. 1 - Compensation for loss of overhead and profit and also profitability'. BEEL had based Claim No.1 for loss on account of overheads and profits/profitability upon 48 months delay as on 27.08.1997. BEEL for computation had considered 10% of the contract value towards overheads and other 10% towards profits/profitability for arriving at the figure of Rs. 3,38,38,460/-, after taking into "account the same percentages from the payments already received by them".

In the subsequent portion of the award, dealing with Claim No. 1, the learned arbitrator has held that the total contract period was 49 months. The original contract period being 18 months, the extended period being 31 months. However, BEEL in the claim statement had accepted that it had provided for 22 months towards overheads in the estimates. Further, the learned arbitrator has allowed additional 3 months for internal administrative process, and for unforeseen delays, such as strikes, red alerts, and as force majeure events.

In other words, the learned arbitrator, for the purpose of default, had excluded the period of 18 months, i.e., the original contract period, plus 4 months as provided by BEEL, and another 3 months on account of internal administrative process and force majeure events. Thus, the default period for which BEEL as per the award is entitled to claim damages/compensation towards overheads and loss of profits/profitability is 24 months.

10. BEEL had, as observed above, accepts the position that the loss towards overheads and profits/profitability has to be arrived at by applying the percentage formula, variant with the execution of the work. Thus, in our opinion, the loss towards overheads and profits/profitability is to be computed on the payments due for the un-executed work, and should exclude the payments received/receivable for the work executed.

In other words, based on the value of the work executed by BEEL, the proportionate amount has to be reduced for computing the damage/compensation as a percentage of expenditure on overheads, and damages for loss of profit/profitability. Damages towards expenditure on overheads and loss of

profit are proportionate, and not payable for the work done and paid/payable. Delay in payment on execution of the work has to be compensated separately.

11. It is an accepted position and specifically recorded in the award that the total value of the contract was Rs. 5,74,35,213.00p. In an earlier paragraph of the award, which has been not reproduced, the learned arbitrator has referred to R.A. Bill No.4 dated 31.08.1993, as per which BEEL had completed work of Rs.1,21,95,859.68p. It is also an accepted and admitted position that as on 30.03.1996, the date on which the work stopped, as per R.A. Bill No. 37, work valued at Rs. 2,92,07,619.13p had been executed.

In other words, BEEL had executed and received payments of Rs. 2,92,07,619.13/- from HPCL from time to time, between the period 01.09.1993 and 30.03.1996. Eighty percent of the work was complete. BEEL has received total payment of Rs.4,14,03,478.81p in terms of running account bills till R.A. No. 37. The balance work was Rs. 1,14,87,042.00p. Twenty percent of Rs.1,14,03,478.81 is Rs.22,97,408.40p. In addition, BEEL is entitled to compensation for the delay in execution of the work of Rs.2,92,07,619.13/- till the date payments were made, albeit, the award directs payment of Rs. 18% interest per annum on all claims awarded effective from 16.05.1997.

12. The award also reduces the performance bank guarantee amount by 50%, without any discussion, elucidation and reason.

13. In order to justify the computation made in the award and also the principle or the method adopted by the arbitral tribunal, BEEL has referred to the Hudson's formula and relied upon judgments of this Court in McDermott International Inc. v. Burn Standard Company Limited and Others. 6, and Associate Builders v. Delhi Development Authority⁷, in addition to an earlier decision of this Court in A.T Brij Paul Singh and Others v. State of Gujarat⁸, and a few judgments of the High Courts.

14. In McDermott International Inc. this Court has referred to various methods of computation of damages in paragraphs 102 to 107. In particular, reference has been made to Hudson's formula, Emden's formula, and Eichleay's formula in the following terms:

"Method for computation of damages

102. [Ed.: Para 102 corrected vide Official Corrigendum No. F.3/Ed.B.J./52/2006 dated 31-7- 2006] . What should, however, be the method of computation of damages is a question which now arises for consideration. Before we advert to the rival contentions of the parties in this behalf, we may notice that in M.N. Gangappa v. Atmakur Nagabhusanam Setty & Co. [(1973)

3 SCC 406] this Court held that the method used for computation of damages will depend upon the facts and circumstances of each case.

102-A. In the assessment of damages, the court must consider only strict legal obligations, and not the expectations, however reasonable, of one contractor that the other will do something that he has assumed no legal obligation to do. (See *Lavarack v. Woods of Colchester Ltd.* [(1967) 1 QB 278 : (1966) 3 All ER 683 : (1966) 3 WLR 706 (CA)] , All ER p. 690 G.)

103. The arbitrator quantified the claim by taking recourse to the Emden Formula. The learned arbitrator also referred to other formulae, but, as noticed hereinbefore, opined that the Emden Formula is a widely accepted one.

104. It is not in dispute that MII had examined one Mr D.J. Parson to prove the said claim. The said witness calculated the increased overheads and loss of profit on the basis of the formula laid down in a manual published by the Mechanical Contractors Association of America entitled "Change Orders, Overtime, Productivity" commonly known as the Emden Formula. The said formula is said to be widely accepted in construction contracts for computing increased overheads and loss of profit. Mr D.J. Parson is said to have brought out the additional project management cost at US\$ 1,109,500. We may at this juncture notice the different formulas applicable in this behalf.

(a) Hudson Formula: In Hudson's Building and Engineering Contracts, Hudson Formula is stated in the following terms:

"Contract head office overhead and profit percentage	x	$\frac{\text{Contract sum}}{\text{Contract period}}$	x	Period of delay"
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In the Hudson Formula, the head office overhead percentage is taken from the contract. Although the Hudson Formula has received judicial support in many cases, it has been criticised principally because it adopts the head office overhead percentage from the contract as the factor for calculating the costs, and this may bear little or no relation to the actual head office costs of the contractor.

(b) Emden Formula: In Emden's Building Contracts and Practice, the Emden Formula is stated in the following terms:

"Head office overhead and profit 100	x	$\frac{\text{Contract sum}}{\text{Contract period}}$	x	Period of delay"
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Using the Emden Formula, the head office overhead percentage is arrived at by dividing the total overhead cost and profit of the contractor's organisation as a whole by the total turnover. This formula has the advantage of using the contractor's actual head office overhead and profit percentage rather than those contained in the contract.

This formula has been widely applied and has received judicial support in a number of cases including *Norwest Holst Construction Ltd. v. Coop. Wholesale Society Ltd.* [Decided on 17-2-1998, [1998] EWHC Technology 339] , *Beechwood Development Co. (Scotland) Ltd. v. Mitchell* [Decided on 21-2-2001, (2001) CILL 1727] and *Harvey Shopfitters Ltd. v. Adi Ltd.* [Decided on 6-3-2003, (2004) 2 All ER 982 : [2003] EWCA Civ 1757] .

(c) Eichleay Formula: The Eichleay Formula was evolved in America and derives its name from a case heard by the Armed Services Board of Contract Appeals, Eichleay Corporation. It is applied in the following manner:

Step 1					
Contract	billings	x	Total overhead for contract period	=	Overhead allocable to the contract

Total billings for contract period					
Step 2					
Allocable	overhead		=		Daily overhead rate

Total days of contract					
Step 3					
Daily contract overhead rate		x	Number of days of delay	=	Amount of unabsorbed overhead"

This formula is used where it is not possible to prove loss of opportunity and the claim is based on actual cost. It can be seen from the formula that the total head office overhead during the contract period is first determined by comparing the value of work carried out in the contract period for the project with the value of work carried out by the contractor as a whole for the contract period.

A share of head office overheads for the contractor is allocated in the same ratio and expressed as a lump sum to the particular contract. The amount of head office overhead allocated to the particular contract is then expressed as a weekly amount by dividing it by the contract period. The period of delay is then multiplied by the weekly amount to give the total sum claimed. The Eichleay

Formula is regarded by the Federal Circuit Courts of America as the exclusive means for compensating a contractor for overhead expenses.

105. Before us several American decisions have been referred to by Mr Dipankar Gupta in aid of his submission that the Emden Formula has since been widely accepted by the American courts being *Nicon Inc. v. United States* [Decided on 10- 6-2003 (USCA Fed Cir), 331 F. 3d 878 (Fed. Cir. 2003)] , *Gladwynne Construction Co. v. Mayor and City Council of Baltimore* [Decided on 25-9- 2002, 807 A. 2d 1141 (2002) : 147 Md. App. 149] and *Charles G. William Construction Inc. v. White* [271 F 3d 1055 (Fed. Cir. 2001)].

106. We do not intend to delve deep into the matter as it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator. 107. If the learned arbitrator, therefore, applied the Emden Formula in assessing the amount of damages, he cannot be said to have committed an error warranting interference by this Court."

15. *McDermott International Inc.* refers to Sections 559 and 7310 of the Indian Contract Act, 1872, which deal with the effect of failure to perform at fixed time in contracts where time is of essence, and computation of damages caused by breach of contract, respectively, and states that these Sections neither lay down the mode nor how and in what manner computation of damages for compensation has to be made. As computation depends upon attendant facts and circumstances and methods to compute damages, how the quantum thereof should be determined is a matter which would fall within the domain and decision of the arbitrator.

16. This is without doubt, a sound legal and correct proposition. However, the computation of damages should not be whimsical and absurd resulting in a windfall and bounty for one party at the expense of the other. The computation of damages should not be disingenuous. The damages should commensurate with the loss sustained.

In a claim for loss on account of delay in work attributable to the employer, the contractor is entitled to the loss sustained by the breach of contract to the extent and so far as money can compensate. The party should be placed in the same situation, with the damages, as if the contract had been performed. The principle is that the sum of money awarded to the party who has suffered the injury, should be the same quantum as s/he would have earned or made, if s/he had not sustained the wrong for which s/he is getting compensated.12

17. We shall subsequently catechise the Hudson's formula, suffice at this stage is to notice that the learned arbitrator does not specifically refer to any formula or the method, and the figures to compute damages under the head of loss on account of overheads and profits/profitability. The award, as quoted above, does refer to Sections 55 and 73 of the Contract Act.

18. Having examined the award and the contents, we would now like to refer to the chart produced by BEEL by way of additional or new material, which it is claimed, is drawn on the basis of the statement of claims filed in the arbitration proceedings, to which the column with the heading "explanation" has been added for the benefit of the court. The chart is as under:

Sr. No.	Particulars	Amount (Rs.)	Explanation
1.	Contract Sum	5,74,35,213.00	Total Contract Value
2.	Overheads (10%) and profits (10%) included in the above sum	1,14,87,042.00	20% of Rs.5,74,35,213.00 (1) i.e. contract value
3.	Time limit for completion of the work	22 Months	Though the contract was for 18 Months, Petitioner estimated that the site would have to be maintained for 22 Months i.e. 4 months over and above contract term.
4.	Overheads and Profits per month [(2) divided by (3)]	5,22,138.27 Per month	Total Overheads and Profits divided by months of work (22 Months)
5.	Value of work done till R.A. Bill No.4 dated 31.08.1993	1,21,95,859.68	Contract period was up to 31.08.1993 i.e. 18 months from 22 February 1992
6.	Pro-rata overheads and profits received till 31.08.1993	24,39,171.00	20% of (5). Since the Petitioner received payment of bill at (5), the overheads and profits for the work done covered by bill at (5) have been deducted by the Arbitrator in (7).
7.	Net loss suffered as on 01.09.1993 [(2) - (6)]	90,47,871.00	As above, for 22 months of work, the Petitioner was to get Rs. 1,14,87,042.00/- (2) towards overheads and profits. However, out of this, the Petitioner received Rs.

			24,39,171.00/- (6), the same has been deducted. Rs.90,47,871.00/- is the outstanding receivable by the Petitioner towards overheads and profits for the contract period.
8.	Delay in months	24 months	Total time spent was 49 Months (Pg.56 of SLP) (22 February 1992 to 31 March 1996). Out of this, since 22 months were contemplated by the Petitioner for the work, the same have been deducted from 49 months by the Arbitrator. (Pg.56 of SLP). A further period of 3 months on account of Force Majeure has been deducted by the Arbitrator. Thus $49 - 22 - 3 = 24$ Months extra work. (Pg.56 of SLP).
9.	Overheads and profit expected during the extra period [(8) * (4)]	1,25,31,318.48	This is the amount for the extra time spent i.e. 24 Months. 244 Months multiplied by per month overhead and profit. $24 * \text{Rs.}5,22,138.27 = \text{Rs.}1,25,31,318.48$
10.	Value of work executed during the extended period upto 30.03.1996 (R.A. Bill No.37)	2,92,07,619.13	This is the amount received for the work done during extended period i.e. August 1993 to March 1996.
11.	Pro-rata overheads and profits received during the extended period.	58,41,523.80	This is 20% of 2,92,07,619.13 (10). Since the petitioner received payment of bill at (10), the overheads and profits for the work

			done covered by bill at (10), have been deducted by the Arbitrator in (11)
12.	Net loss suffered till 27.08.1997 [(9) - (11)]	66,89,791.68	This is loss of overhead and profits for the extra period of 24 Months. As stated in (9), overheads and profits for extra time of 24 months was Rs.1,25,31,318.48. Since, the Petitioner received a sum of Rs.58,41,523.80 (11), the same has been deducted by the Arbitrator.
13.	Total loss on overheads and profit on this count till 27.08.1997 [(7) - (12)]	1,57,37,665.68	This amount is the sum of overhead and profits due during contract period plus the overhead and profits for the extra period of 24 Months. Awarded by the Arbitrator (Pg.56 of SLP)

19. The chart and explanations given in the chart, we believe, are an afterthought and futile finagle to work backwards to somehow justify the computation and award of damages. These explanations are ex facie irrational and eristic for the following reasons:

(i) S.No.7 computes the net loss suffered by BEEL as Rs.90,47,871/-as on 01.09.1993, that is for the period of 18 months. The computation ignores and does not add the period of 4 months as mentioned by BEEL in the claim statement. Further, the arbitrator had added another period of 3 months for internal administrative process and force majeure events. Thus, the date 01.09.1993 referred to in S.No.7 is incorrect and not the basis of the computation made in the award. S.No.7 fails to taken into consideration the seven-month period, which as per the award has to be added.

(ii) The figure of Rs.90,47,871/- would have been relevant, in absence of work done and in fact payments post 01.09.1993. However, it is an accepted and admitted position that payment of Rs.2,92,07,619.13p was made on different dates between 01.09.1993 till 30.03.1996 upon completion of the proportionate value of the work. Claim on account of loss of profits/profitability and overheads, as has been explained above and also elucidated herein-after with reference to several judgments and treatise, is payable if and when there is an increase in cost of off-site and on-site overheads due to delay in completion of work post the agreed or contractual period which is caused by the employer.13

Further, loss on account of profit earning capacity is paid when the contractor's profit earning capacity is affected due to it being retained longer in the contract in question, without corresponding increase in the monetary benefit earned and without being free to move elsewhere to earn profit which it might otherwise be able to do. It is not the case of BEEL that they are entitled to enhance or increase in cost on account of delay in execution of the work. Pertinently, Claim No. 3 for compensation of losses incurred due to increase in cost of material and labour has been specifically rejected, as escalation in prices/costs are barred by the terms of the contract.

(iii) The computation of loss under S.No.7 of Rs.90,47,871/- is, therefore, unsustainable and cannot be justified by any calculation and in terms of the Contract Act. (iv) As per the chart, in addition to Rs.90,47,871/-, the arbitrator has awarded at S.No.12, a further amount of Rs.66,89,794.68p. on account of loss of overheads and profits for the extra period of 24 months, that is, till 27.08.1997. The figure as per S.No.12 is arrived at after reducing pro rata overheads and profits during the extended period as mentioned in S.No.9. The computation belies and defies logic.

It clearly amounts to double payment towards compensation and damages, as it fails to notice that the sum mentioned in S.No.7 of Rs. 90,47,871/- is on account of compensation towards overheads and profits/profitability. Therefore, 20% of the value of the unfinished work had already been included in the computation and awarded under S.No.7. The date 27.08.1997 is at best, an assumption of BEEL and not mentioned anywhere or decipherable from the award.

20. We have briefly referred to the principle applicable for computing the claim for compensation/damages in case of partial prevention, i.e., where the breach by the employer is not fundamental and does not entitle the builder/contractor to cease the work, or, being fundamental, is not treated as repudiation by the builder/contractor.

Measure of compensation/damages in such cases is the loss of profit arising from reduced profitability or added expense of the work carried out.¹⁴ In a given case, where there is a fundamental breach by the employer, albeit, the builder/contractor does not immediately elect to treat the contract as repudiated, he may still be entitled to raise a claim for loss of profit on the uncompleted work.

Offsite expenses or overheads are all administrative or executive costs incidental to the management supervision or capital outlay as distinguished from operating charges. These charges cannot be fairly charged to one stream of work or job, and rather be distributed as they relate to the general business or the work of the

contractor/builder being undertaken or to be undertaken, as the overheads are relatable to the builder/contractor's business in entirety.

21. The usage of formulae such as Hudson's, Emden's, or Eichleay's formulae to ascertain the loss of overheads and profits has been judicially approved in the English cases of *Peak Construction (Liverpool) Ltd v. McKinney Foundations Limited*¹⁵, *Whittal Builders v. Chesterle-Street District Council*¹⁶, and *JF Finnegan Ltd v. Sheffield City Council*¹⁷ and in the Canadian case of *Ellis- Don v. Parking Authority of Toronto*¹⁸.

The three formulae deal with theoretical mathematical equations, but are based on factual assumptions, and therefore can produce three different and unrelated compensation/damages. Therefore, while applying a particular equation or method, the assumptions should be examined, and the satisfaction of the assumption(s) ascertained in the facts and circumstances.

22. The formula suggested by Hudson in his 10th edition of the book *Building and Engineering Contracts* for the computation of damages takes the head office and profit percentage as a proportion of the contract value. The formula assumes that the profit judged by the builder/contractor is in fact capable of being earned by her/him elsewhere had the builder/contractor been free to leave the contract at the proper time.

The formula is couched on three assumptions. First, that the contractor is not habitually or otherwise underestimating the cost when pricing; secondly the profit element was realistic at that time; and lastly, there was no fluctuation in the market conditions and the work of the same general level of profitability would be available to her/him at the end of the contract period. Satisfaction of these assumptions should be ascertained when we apply Hudson's formula for computing the damages. Material should be furnished by the claimant to justify and assure that the assumptions for applying Hudson's formula are met.

23. Ordinarily, when the completion of a contract is delayed and the contractor claims that s/he has suffered a loss arising from depletion of her/his income from the job and hence turnover of her/his business, and also for the overheads in the form of workforce expenses which could have been deployed in other contracts, the claims to bear any persuasion before the arbitrator or a court of law, the builder/contractor has to prove that there was other work available that he would have secured if not for the delay, by producing invitations to tender which was declined due to insufficient capacity to undertake other work.

The same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than

from extraneous causes. If loss of turnover resulting from delay is not established, it is merely a delay in receipt of money, and as such, the builder/contractor is only entitled to interest on the capital employed and not the profit, which should be paid. The High Court of Justice Queen's Bench Division in the case of *Property and Land Contractors Ltd v. Alfred McAlpine Homes North Ltd*.¹⁹ succinctly points the in-exactitude of Hudson's formulae, by observing:

"Furthermore the Emden formula, in common with the Hudson formula (see *Hudson on Building Contracts*, (11th edn, 1995) paras 8-182 et seq) and with its American counterpart the Eichleay formula, is dependent on various assumptions which are not always present and which, if not present, will not justify the use of a formula. For example the Hudson formula makes it clear that an element of constraint is required (see *Hudson* para 8.185) ie in relation to profit, that there was profit capable of being earned elsewhere and there was no change in the market thereafter affecting profitability of the work.

It must also be established that the contractor was unable to deploy resources elsewhere and had no possibility of recovering cost of the overheads from other sources, eg from an increased volume of the work. Thus such formulae are likely only to be of value if the event causing delay is (or has the characteristics of) a breach of contract."

24. As mentioned in *McDermott International Inc.*, Hudson's 11th Edition has referred to Eichleay formula, which gives the resultant figures with greater precision and accuracy. This formula, which emerged in 1960s²⁰, is far more nuanced and rigorous, as it requires the builder/contractor to itemise and quantify the total fixed overheads during the contract period.

It takes into consideration all the contracts of the contractor/builder during the contract period with those of the individually delayed contract to determine the proportionate fraction of the total fixed overheads. However, in both Hudson's and Eichleay's formulae, the amount to be recovered is determined weekly or monthly, which the delay in the contract completion is expected to earn.

25. Hudson's formula might result in double recovery as the profit being added to the profit is already subsumed within the 'contract sum'. To avert this double-recovery, it has been suggested that the formula should be modified to 'contract sum less overhead and profit'²¹. Any increase in the value of the final account for extra works such as variations contain their own element of overheads and profits. Therefore, Hudson's formula like other formulae, which are only rough approximations of the cost impact of unabsorbed overhead, should be applied with great care and caution to ensure fair and just computation.²²

26. Hudson in his 14th Edition refers to claim for management or overheads during the period of delay. The author has referred to Hudson's formula as well as Eichleay's formula, and observes that recently limitations of Hudson's approach have received greater emphasis as the English courts have become more generous in their approach and assessment of claims for time management.

The authors accept what has been highlighted above, and the need to take care in delay cases to avoid any double recovery, overlap with other claims, or when payments are obtained by the contractor on account of variation(s), or any damages for breach have to be concluded by using contract price. "Thickening", by adding unreasonable expenses, should not be accepted. It is observed that in the total cost method, there is difficulty in linking cause and effect convincingly, albeit is more precise and factually accurate.

Thus, Hudson's method should be taken as the basis for computation with caution and as a last resort, where no other way to compute damages is feasible or mathematically accurate. Inaccuracies in Hudson's computation should not be overlooked, and should be accounted and neutralized. Hudson's formula when applied should be with full care and caution not to over-award the damages.

27. Arbitral tribunal in the present case has given complete go by to these principles well in place, overlooked care and caution required and taken a one-sided view grossly and abnormally inflated the damages. The figures quoted in paragraph 11 supra show the overstatement and aggrandizement in awarding Rs. 1,57,37,666/-, towards loss of overheads and loss of profits/profitability, in a contract of Rs. 5,74,35,213/-. Rs.1,21,95,859.68/- was paid for the work done within the term. Rs. 2,92,07,619.13 was paid for the work done post the term.

Thus, Rs. 4,14,03,478.81/- was paid for 80% of the work. The balance was Rs.1,14,87,042.00/. The amount awarded towards loss of overheads and profits/profitability is Rs.1,57,37,666/-. No justification for computation of the loss is elucidated or can be expounded. Even if one were to rely upon the chart given by the BEEL, and ignore the contradictions in findings, the amount awarded is highly disproportionate and exorbitant. It is clearly a case of overlapping or at least a part doubling of the loss/damages.

28. The arbitral tribunal has accepted that principle of mitigation is applicable but observes that the only way BEEL could have abased the loss, was to work on Sundays or holidays. This reasoning is again ex facie fallacious and wrong. The principle of mitigation with regard to overhead expenses does not mandate working on Sundays or holidays.

29. We would like to refer to Claim No.2 for idle machinery and equipment. This was on account of extended period of contract. This claim of more than Rs.84,00,000/- has been accepted for Rs.12,00,000/-, by simply stating that the learned arbitrator had inspected the site and, in his opinion, there is substance in the claim. Inspection of the site was post the appointment of the arbitrator after August 1997, whereas BEEL had abandoned the contract more than a year ago in March 1996. The amount awarded is merely on ipsi dixit without giving any reasons and basis for awarding the amount.

30. The scope and ambit of the court's power to review the awards under Section 34 of the A&C Act has been contentious viz., on the interpretation to the expression 'in conflict with the public policy of India'. There have been legislative interventions as well as judicial pronouncements. In the context of the present case, we are required to interpret the provisions as they existed on the date on which the objections to the award were filed i.e., on 21.06.1999. Accordingly, the amendment introduced to Section 34 of the A&C Act vide Act No. 3 of 2016 with retrospective effect from 23.10.2015 and the judgments of this Court examining the amended Section 34 of the A&C Act need not be examined.

31. Post award interference and the extent of the second look by the courts under Section 34 of the A&C Act has been a subject matter of perennial parley. The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an arbitral tribunal, whose decision is binding on the parties.²³

It is argued that the purpose of arbitration is fast and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is unwarranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party to have its claim or dispute adjudicated by the judiciary.

The process is informal, and need not be legalistic²⁴. Per contra, it is argued that party autonomy should not be treated as an absolute defence, as a party despite agreeing to refer the disputes/claims to a private tribunal consensually, does not barter away the constitutional and basic human right to have a fair and just resolution of the disputes. The court must exercise its powers when the award is unfair, arbitrary, perverse, or otherwise infirm in law.

While arbitration is a private form of dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a 'judicially' sound and objective outcome. If these requirements, which are equally fundamental to all forms of

adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.

32. To disentangle and balance the competing principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise. We begin by first referring to the views expressed by this Court in interpreting the width and scope of the post award interference by the courts under Section 34 of the A&C Act.

33. Section 34 of the A&C Act, prior to amendment effected vide Act No. 3 of 2016 with retrospective effect from 23.10.2015, reads as under:

"34. Application for setting aside arbitral award.-

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in

conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.- Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal: Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award."

34. Sub-section (1) to Section 34 of the A&C Act requires that the recourse to a court against an arbitral award is to be made by a party filing an application for setting aside of an award in accordance with sub-sections (2) and (3) of Section 34. Sub-section (2) to Section 34 of the A&C Act stipulates seven grounds on which a court may set aside an arbitral award.

Sub-section (2) consists of two clauses, (a) and (b). Clause (b) consists of two sub-clauses, namely, sub-clause (i) which states that when the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, and sub-clause (ii), which states that the court can set aside an arbitral award when the award is 'in conflict with public policy of India'. We shall subsequently examine the decisions of this Court interpreting 'in conflict with public policy of India' and the explanation.

35. Under sub-clause (a) to sub-section (2) to Section 34 of the A&C Act, a court can set aside an award on the grounds in sub-clauses (i) to (v) namely, when a party being under some incapacity; arbitration agreement is not valid under the law for the time being in force; when the party making an application under Section 34 is not given a proper notice of appointment of the arbitrator or the arbitration proceedings, or was unable to present its case; and when the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties, unless such agreement was in conflict with the mandatory and binding non-derogable provision, or was not in accordance with Part I of the A&C Act.

Sub-clause (iv) states that the arbitral award can be set aside when it deals with a dispute not contemplated by, or not falling within the terms of submission of arbitration, or it contains a decision on matters beyond the scope of submission to arbitration. However, the proviso states that the decision in the matters submitted to arbitration can be separated from those not submitted, then that part of the arbitral award which contains the decision on the matter not submitted to arbitration can be set aside. In the present case, we are not required to examine sub-clauses to clause (a) to sub-section (2) to Section 34 of the A&C Act in detail. Hence, this decision should not be read as making any observation, even as obiter dicta on the said clauses.

36. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act No.3 of 2016, had postulated and declared for avoidance of doubt that an award is 'in conflict with the public policy of India', if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act.

Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while 'fraud' and 'corruption' are two specific grounds under 'public policy', these are not the sole and only grounds on which an award can be set aside on the ground of 'public policy'.

37. Act No. 3 of 2016 with retrospective effect from 23.10.2015 has substituted the explanation referred to above, by two new explanations that are differently worded.²⁵ Sub-section (2-A) to Section 34 of the A&C Act, which was instituted by Act No. 3 of 2016 with retrospective effect from 23.10.2015, states that the arbitral award arising out of arbitrations other than international commercial arbitrations can be set aside by the court, if it is vitiated by patent illegality appearing on the face of the award.

The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappraisal of evidence. The aforesaid sub-section need not be examined in the facts of the present case, as we are not required to interpret and apply the substituted explanations to (ii) to sub-clause (b) to 34(2) of the A & C Act in the present case.

38. The expression 'public policy' under Section 34 of the A&C Act is capable of both wide and narrow interpretation. Taking a broader interpretation, this Court in *ONGC Limited. v. Saw Pipes Limited.*,²⁶ held that the legislative intent was not to uphold an award if it is in contravention of provisions of an enactment, since it would be contrary to the basic concept of justice.

The concept of 'public policy' connotes a matter which concerns public good and public interest. An award which is patently in violation of statutory provisions cannot be held to be in public interest. Thus, expanding on the scope and expanse of the jurisdiction of the court under Section 34 of the A&C Act, it was held that an award can be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Nevertheless, the decision holds that mere error of fact or law in reaching the conclusion on the disputed question will not give jurisdiction to the court to interfere. However, this will depend on three aspects:

- (a) whether the reference was made in general terms for deciding the contractual dispute, in which case the award can be set aside if the award is based upon erroneous legal position;
- (b) this proposition will also hold good in case of a reasoned award, which on the face of it is erroneous on the legal proposition of law and/or its application; and
- (c) where a specific question of law is submitted to an arbitrator, erroneous decision on the point of law does not make the award bad, unless the court is satisfied that arbitrator had proceeded illegally.

In the said case, the court set aside the award on the ground that the award had not taken into consideration the terms of the contract before arriving at the conclusion as to whether the party claiming the damages is entitled to the same. Reference was made to the provisions of Sections 73 and 74 of the Contract Act, which relate to liquidated damages, general damages and penalty stipulations.

This view had held the field for a long time and was applied in subsequent judgments of this Court in *Hindustan Zinc Ltd. v. Friends Coal Carbonisation*²⁷, *Centrotrade Minerals and Metals Inc. v. Hindustan Copper Limited*²⁸, *Delhi Development Authority v. R.S. Sharma and Co*²⁹., *J.G. Engineers (P) Ltd. v. Union of India and Another*³⁰, and *Union of India v. L.S.N. Murthy*.³¹

39. In 2006, this Court in *McDermott International Inc.* despite following the ratio of *Saw Pipes Limited*, made succinct observations regarding the restrictive role of courts in the postaward interference. In addition to the three grounds introduced in *Renusagar Power Co. Limited v. General Electric Co*³², as noticed above, an additional ground of 'patent illegality' was introduced *Saw Pipes Limited*, for exercise of the court's jurisdiction in setting aside an arbitral award.

This Court, in *McDermott International Inc.*, held that patent illegality, must be such which goes to the root of the matter. The public policy violation should be so unfair and unreasonable as to shock the conscience of the court. Arbitrator where s/he acts contrary to or beyond the express law of contract or grants relief, such awards fall within the purview of Section 34 of the A&C Act.

Further, what would constitute public policy is a matter dependent upon the nature of transaction and the statute. Pleadings of the party and material brought before the court would be relevant to enable the court to judge what is in public good or public interest, or what would otherwise be injurious to public good and interest at a relevant point. So, this must be distinguished from public policy of a particular government.

40. A similar view was expressed in *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran*³³ with the clarification that where a term of the contract is capable of two interpretations and the view taken by the arbitrator is a plausible one, it cannot be said that the arbitrator travelled outside the jurisdiction or the view taken the arbitrator is against the terms of the contract.

The court cannot interfere with the award and substitute its view with the award and interpretation accepted by the arbitrator, the reason being the court does not sit in appeal over the findings and decision of the arbitrator, while deciding an application under Section 34 of the A&C Act. The arbitrator is legitimately

entitled to take a view after considering the material before him/her and interpret the agreement. The judgment should be accepted as final and binding.

41. Subsequently, in *ONGC Ltd. v. Western Geco International Ltd.*,³⁴ a three Judge Bench of this Court observed that the Court, in *Saw Pipes Ltd.*, did not examine what would constitute 'fundamental policy of Indian law'. The expression 'fundamental policy of Indian law' in the opinion of this Court includes all fundamental principles providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of 'fundamental policy of Indian law'.

The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed.

This would include the requirement that the arbitral tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Nonapplication of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C35 states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice.

In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of *Wednesbury* principle of reasonableness³⁶. At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute 'fundamental policy of Indian law', as a straightjacket definition is not possible.

If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an arbitral

tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

42. The decision of this Court in Associate Builders elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head 'fundamental policy of Indian law'. It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.

43. Referring to the third principle in Western Geco, it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The standards prescribed in Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons³⁷ and Kuldeep Singh v. Commissioner of Police³⁸ should be applied and relied upon, as good working tests of perversity.

In Gopi Nath & Sons it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse.

This Court in Associate Builders emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge.

At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are two different concepts. An award is against justice when it shocks the conscience of the court, C.A. No. 1968 of 2012 Page 48 of 50 as in an example where the claimant has restricted his claim but the arbitral tribunal has awarded a higher amount without any reasonable ground of justification.

Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, 'patent illegality' refers to three sub-heads: (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature.

Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the arbitral tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction.

This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do.

44. As observed previously, we need not examine the amendment made to the A&C Act vide Act No. 3 of 2016 with retrospective effect from 23.10.2015 and the judgments that deal with the amended Section 34 of the A&C Act. Pertinently, the amendment to Section 34 of the A&C Act was effected, pursuant to the observations of the Supplementary Report to Report No. 246 on Amendments to Arbitration and Conciliation Act, 1996 by the Law Commission of India, titled 'Public Policy - Developments post-Report No. 246' published in February 2015.

This Supplementary Report observed that the power to review an arbitral award on merits under Section 34 of the A&C Act, as elucidated in the case of *Western Geco*, subsequently followed in *Associate Builders*, is contrary to the object of the A&C Act and international practice on minimization of judicial intervention. A reference can also be conveniently made to *MMTC Ltd. v. Vedanta Ltd.*,³⁹ and *Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India*⁴⁰, which examine the scope of intervention of courts under Section 34 of the A&C Act as amended by Act No. 3 of 2016. *MMTC Ltd.* and *Ssangyong Engg.*, and other judgments which deal with the amended Section 34 of the A&C Act that are not applicable in the present case.

45. We have extensively analysed the award, its patent flaws and illegalities which emanate from it, like the manifest lack of reasoning in arriving at the conclusions and the calculation of amounts awarded, which, in fact, amount to double or part-double payments, besides being contradictory etc.

In view of our aforesaid reasoning, the award has been rightly held to be unsustainable and set aside by the division bench of the High Court exercising power and jurisdiction under Section 37 read with Section 34 of the A & C Act.

46. In view of the aforesaid discussion, the appeal is dismissed without any order as to costs.

.....**J. (Sanjiv Khanna)**

.....**J. (M.M. Sundresh)**

New Delhi;

September 21, 2023.

1 For short, BEEL.

2 Appeal No. 227 of 2001 in Arbitration Petition No. 280 of 1999.

3 For short, HPCL.

4 For short, A&C Act.

5 Section 31 - Form and contents of arbitral award - (3) The arbitral award shall state the reasons upon which it is based, unless-

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

6 (2006) 11 SCC 181 (for short, McDermott International Inc.).

7 (2015) 3 SCC 49 (for short, Associate Builders).

8 (1984) 4 SCC 59.

9 **Section 55** - Effect of failure to perform at fixed time, in contract in which time is essential - When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as

has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.- If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.- If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

10 Section 73 - Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract. When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation - In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

11 For short, Contract Act.

12 See - Robinson v. Harman (1848) 1 Ex 850 at 855 and Livingstone v. Rawyards Coal Co (1879-80) L.R. 5880 cases 25

13 In this case, as noticed, the contract bars claims for compensation for losses due to enhancement/escalation of costs etc. We make no comments in this

regard. Interpretation and validity of such clauses is not subject matter of this appeal. When such clauses, which are apparently onesided and absolve breach with immunity, are subjected to judicial scrutiny, the courts/tribunals invariably tend to interpret the clauses in a restrictive manner to grant just and fair relief. Courts should be slow to interfere, unless the award falls within the ambit of the parameters set out in Section 34 of the A&C Act.

14 See Hudson's Building Contracts (10th edn) pp 450, 596.

15 (1970) 1 BLR 114.

16 (1987) 40 BLR 82.

17 (1988) 43 BLR 124.

18 (1978) 28 BLR 98.

19 (1995) 76 BLR 59.

20 The formula borrows the name from the Armed Services Board of Contract Appeals decision in Eichleay Corporation case, ASBCA No. 5183, 60-2 BCA.

21 Ibid.

22 Claims for head office overheads - alternatives to formulae, John W. Pettet, 1999.

23 See Vidya Drolia and Others v. Durga Trading Corporation and Others, (2021) 2 SCC 1, which examines arbitrability and non-arbitrability of subject matters and claims, which aspect will not be examined in this case.

24 The expression "judicially", does not equate arbitration with formal/court proceedings, and would include a just and fair decision.

25 Explanations 1 and 2 to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act substituted vide Act No. 3 of 2016 read as under:

Explanation 1.- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

Sub-section 2A to Section 34(2) of the A&C Act inserted vide Act No. 3 of 2016 reads as under:

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

26 (2003) 5 SCC 705 (for short, Saw Pipes Limited).

27 (2006) 4 SCC 445.

28 (2006) 11 SCC 245.

29 (2008) 13 SCC 80.

30 (2011) 5 SCC 758.

31 (2012) 1 SCC 718.

32 1994 Supp (1) SCC 644.

33 (2012) 5 SCC 306.

34 (2014) 9 SCC 263, (for short, Western Geco)

35 Supra footnote 5.

36 As expounded in the case of Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation., (1948) 1 KB 223: (1947) 2 All ER 680 (CA).

37 1992 Supp (2) SCC 312, (for short, Gopi Nath & Sons).

38 (1999) 2 SCC 10.

39 (2019) 4 SCC 163 (for short, MMTCL Ltd.).

40 (2019) 15 SCC 131(for short, Ssangyong Engg).

IN THE SUPREME COURT OF INDIA

Sunil
Vs.
State of NCT of Delhi

[Criminal Appeal No. 688 of 2011]

Ravinder
Vs.
State of NCT of Delhi

[Criminal Appeal No. 689 of 2011]

Shri Krishan
Vs.
State of NCT of Delhi

[Criminal Appeal No. 785 of 2011]

HEADNOTE – Section 313 Cr.P.C. - Failure to put incrimination circumstances to accused will not vitiate trial if no prejudice is caused

JUDGMENT

Manoj Misra, J.

1. These three appeals are against the judgment and order of the High Court of Delhi (in short "the High Court") dated 28.07.2009 passed in Criminal Appeal Nos. 962 of 2004; 977 of 2004; 981 of 2004; 14 of 2005; and 61 of 2005, by which Criminal Appeal Nos. 962 of 2004; 977 of 2004; 981 of 2004; and 61 of 2005, preferred by Sunil (appellant in Criminal Appeal No.688 of 2011), Shri Krishna (appellant in Criminal Appeal No.785 of 2011), Ravinder (appellant in Criminal Appeal No.689 of 2011) and Babu Ram @ Fauji (co-accused), respectively, were dismissed whereas Criminal Appeal No.14 of 2005 of co-accused Vijay was allowed.

The net result of the impugned judgment and order is that the order of the trial court (i.e., Court of Additional Sessions Judge, Delhi), dated 08.11.2004, in Sessions Trial No.42 of 1999, arising out of FIR No.561 of 1998, P.S. Jahangir Puri, convicting and sentencing Babu Ram @ Fauji, Sunil, Shri Krishan and Ravinder under Sections 302/307/34 of the Indian Penal Code (in short, "the

I.P.C.") has been affirmed whereas conviction of co-accused Vijay has been set aside.

It be noted that Babu Ram @ Fauji was also sentenced under Section 27 of the Arms Act, which has also been affirmed by the High Court. The sentence awarded to the appellants, namely, Sunil, Shri Krishan and Ravinder, which is impugned in these appeals, is as under:

(i) Imprisonment for life with fine of Rs. 2000/-, coupled with a default sentence of six months R.I., under Section 302/34 I.P.C.; and

(ii) Five years R.I. with fine of Rs. 1000/-, coupled with a default sentence of three months, under Section 307/34 I.P.C. Introductory Facts

2. This is a case where, on account of indiscriminate firing by Babu Ram @ Fauji (nonappellant) from his licensed single barrel gun, two persons, namely, Anil Kumar and Vijay, suffered gunshot injuries and died; and 26 others received pellet injuries, some of them being grievous in nature.

3. Babu Ram, who fired the gun shots from his licensed gun, handed over his gun to the police along with 16 used and 4 live cartridges while setting up a plea of self-defence. The appellants before us and Vijay (who has been acquitted by the High Court) were roped in with the aid of Section 34 of the I.P.C. as persons who exhorted Babu Ram to fire gunshots.

4. According to the prosecution case, on 11.11.1998, there was tension in the locality as boys from the accused side had teased daughter of Lala Satpal. Giving vent to that tension, at about 3.00 pm, an altercation took place between Satpal and Shri Krishan whose son Sunil was present. Anil Kumar (one of the two deceased) i.e., brother of Mangat Ram (PW-2) took side of Satpal. Babu Ram (non-appellant) and his son Ravinder joined the altercation taking side of Shri Krishan.

Thereafter, Shri Krishan, his son Sunil, Babu Ram and Babu Ram's son Ravinder left the place while extending threats that they would teach Satpal and his supporters a lesson. Soon thereafter, Babu Ram, Shri Krishan, Ravinder and Sunil appeared on the roof of PW-2's house and from there, on the instigation of Shri Krishan, Sunil and Ravinder, Babu Ram fired shots at the supporters of Satpal resulting in death of two persons and injuries to as many as 26 persons.

5. As, according to the prosecution, genesis of the incident was a dispute between two families on account of young male members of one family (i.e., of Sri Krishan) teasing female members of the other (i.e., family of Satpal), the relationship of accused persons inter se assumes importance, which is as below:

- (i) Shri Krishan is the husband of Babu Ram's sister;
- (ii) Sunil is son of Shri Krishan;
- (iii) Ravinder is son of Babu Ram; and
- (iv) Vijay (already acquitted) is a distant relative of Shri Krishan.

6. To prove its case, the prosecution examined 56 witnesses. On the other hand, the appellants including Babu Ram examined 15 defence witnesses. As Babu Ram took the plea of self-defence, the trial court as well as the High Court examined his defence plea in detail. The defence plea taken by Babu Ram was that a mob had surrounded his house and threatened to torch it.

Therefore, to disburse the mob, shots were fired. This defence was carefully examined by the trial court as well as the High Court with reference to the site plan and the evidence led. After examining the same, it was found that persons who died including those who received injuries were on Street No. 300 whereas the house of Babu Ram had no opening on Street No. 300. Rather, its opening was on Street No. 400. The High Court noticed that even the back wall of the house of Babu Ram did not abut Street No. 300 where the incident occurred.

Not only that, the evidence brought on record established that gunshots were fired from the roof-top of Mangat Ram's house (i.e. House No.354) upon persons who were standing or moving on Street No.300. In this scenario, the defence plea was found unacceptable and was therefore discarded by the trial court as well the High Court. Detailed reasons in that regard can be found in paragraphs 45 to 57 of High Court's judgment, extracted below:

"45. In our opinion there is hardly much scope for raising a dispute pertaining to the defence of Babu Ram of having acted in self-defence. The defence is a sham.

46. The site plan, Ex.PW-56/A, prepared by Inspector Sajan Singh and the site plan to scale Ex.PVJ-7/A prepared by Tirath Raj Singh PW-7, to which we have made a detailed reference in para 11 above, show that deceased Vijay and Anil were shot dead at street No.300. Mangat Ram PW-2 also was shot at in street No.300. PW-8, PW-9, PW-13, PW-14, PW-15 and PW- 27 have categorically stated that they received the gunshot injuries when they were in street No.300. These witnesses may be related to the two young boys who were shot dead as also to Mangat Ram, the complainant, but said fact alone would not render suspect their testimonies.

The said six witnesses are all residents of block-D and have their houses on gali No.300 and thus their presence at the spot is natural. That all of them received

gunshot wounds itself establishes their presence at the spot. A related witness is not an interested witness on account of being the relation of the complainant. An interested witness is one who has a motive to secure the false conviction of the accused and to achieve the same deposes falsely. As held in the decision reported as State of Rajasthan v. Smt Kalki & Anr (1981) 2 SCC 752:-

"As mentioned above, the High Court has declined to rely on the evidence of P.W.I on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence.

True, it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W. 1 had no interest in protecting the real culprit, and falsely implicating the respondents."

47. Besides, the other prosecution witnesses namely PW-17, PW-23, PW-29, PW-30, PW-33, PW-34, PW- 35, PW-36, PW-37, PW-38, PW-39, PW-40, PW-41. PW-42, PW-43, PW-44 and PW-46 are not related to the deceased or Mangat Ram. Said witnesses have deposed that they received gunshot wounds on 11.11.1998 at around 3/3:30 PM. Out of said 17 witnesses, PW-23, PW-29, PW-33, PW-37, PW-38, PW-39, PW-40, PW-41, PW-42, PW-43, PW-44 and PW-46 have categorically deposed that they were present at Gali No.300 when they received the gunshot wounds.

The other witnesses have not stated as to where they were standing when they received the gunshot wounds. PW-23, PW-29, PW-33, PW-37, PW-38, PW-39, PW-40, PW-41, PW-42, PW-43, PW-44 and PW-46 are not related to each other or to the deceased or to any other witness of the prosecution, They would have no motive to falsely depose. The testimony of said witnesses establishes that the firing was directed towards people who were on street No.300. The house of Babu Ram is abutting street No.400, which as noted in para 11 above, runs parallel to street No.300 and the two streets are separated by a row of houses constructed back to back.

In no way can an unruly crowd which has assembled on street No.300 set on fire any house which is on street No.400. Further, the falsity in the testimony of the defence witnesses who claim that Babu Ram, acting in defence of his house and himself and his family members, fired from the roof of his house is apparent from the fact that standing on the roof of house No.366 which is the house of Babu Ram, it is just not possible to hit anybody standing on street No.300.

A little bit of geometry would show the same. Standing on any point at the roof of the house of Babu Ram, the straight line connecting the said spot from any portion of his roof to any spot on street No.300 would pass through the roof and the walls of house No. D-355, D-356 and D-357 abutting street No.300 on its northern boundary.

48. Besides, there is no evidence of any kerosene oil or petrol being detected outside the house of Babu Ram. This also falsifies the defence version that the riotous mob was threatening to burn down the house of Babu Ram.

49. No doubt, FIR Ex.PW-19/D-3 has indeed been registered at 9:10 PM which evidences rioting in DBlock, Jahangir Puri, but therefrom it does not stand proved that the defence version is correct. It is also true that photographs of the house of Babu Ram show that the door of his house has been broken and brick bats have been thrown towards his house.

50. What has happened is evident. After Babu Ram fired indiscriminately and shot dead two persons on the street and injured 26 more on the street i.e. street No.300, it was apparent that the crowd retaliated. The site plan Ex.PW-7/A shows that the houses on the streets of D-Block Jahangir Puri have a front of 10' and a depth of 23'.10". Jahangir Puri is a resettlement colony where slum dwellers have been relocated. Tiny plots ad measuring 10' x 23'.10" have been allotted to the rehabilitated slum dwellers by the government.

The population density in the colony is extremely heavy. Huge crowds can gather in densely populated areas within seconds. It is apparent that the angry crowd sought vengeance against Babu Ram after Babu Ram had created mayhem in the area. That 16 rounds were fired by Babu Ram is not disputed by him. By no stretch of imagination can firing of 16 rounds be belittled. If a man fires 16 rounds on a crowd causing death of 2 and injuring 26 others, the crowd is bound to retaliate.

51. From the evidence of the witnesses of the prosecution it is apparent that some quarrel regarding eve teasing had taken place on street No.300 involving the families of Satpal and accused Shri Kishan who is the brother-in-law of Babu Ram. Even the defence witnesses have spoken of an 'eveteasing incident. The

difference is, as per the defence witnesses the victim of the eve teasing incident was Seema, the daughter of Shri Kishan and as per the prosecution witnesses the aggressors were the family members of Shri Kishan.

There is commonality in the testimony of both sets of witnesses that Babu Ram left street No.300 taking along with him his sister Sushila and Seema. The difference in the two versions is regarding the presence of the co-accused. As per the witnesses of the prosecution, some of them have spoken of all co-accused being present at street No.300, with some excluding the presence of coaccused Vijay. It is thus apparent that whatever be the cause of the spat on the public street, Babu Ram retrieved himself safely from the street and reached his house.

52. We have already discounted the defence version, in view of evidence on record, of the crowd following Babu Ram and surrounding his house. We have already held that the evidence establishes indiscriminate firing by Babu Ram on the persons in street No.300 and the fact that his house abuts street No.400 evidences that the firing was not to scare the crowd which had surrounded the house of Babu Ram. We have already held that for anyone to be standing on street No.300 it is just not possible to set on fire any house on street No.400. We have already held that by standing on any spot on the roof of Babu Ram's house it was just not possible to shoot any person on street No.300.

53. The inevitable conclusion is, that as claimed by the witnesses of the prosecution, Babu Ram jumped from the roof of his house on to the roof of House No.D-354 of Mangat Ram and standing at the roof of Mangat Ram's house at the spot marked '4' on the site plan Ex.PW-7/A, indiscriminately fired 16 shots, all directed downwards on the persons in street No.300, with specific targets being Mangat Ram and his family members against whom Babu Ram had a grievance of being the sympathizers of Lala Satpal.

54. Besides, the right of self-defence is a self-limiting right and authorizes the person acting in self-defence to use only such force which is reasonable and commensurate with the danger to body or to property. No doubt, defence of a dwelling house stands on a different footing and law has always looked with special indulgence on a man who is defending his dwelling against those who try to unlawfully evict him, for: the house of everyone is to him as his castle and fortress.

55. The indiscriminate firing by Babu Ram cannot be justified under any circumstances.

56. The testimony of the witnesses of the prosecution and the defence, though with a difference qua the origin of a spat on the public street, establishes a public spat on a public street involving the families of Sri Krishan and Lala Satpal. The evidence, as held above, establishes that Babu Ram fired from the roof of the house of Mangat Ram and targeted people on street No.300 where the spat between the family members of Shri Krishan and Lala Satpal took place.

It is apparent that Babu Ram was led into firing because he learnt of the quarrel going on in street No.300. It is obvious that Babu Ram had come to aid of his sister and his brother-in-law. It is obvious that Babu Ram has acted with vengeance and not to protect himself or his house. It is not the case of Babu Ram that his sister's house or the family members of his sister who were on street No.300 were in danger and he did the firing to protect them.

57. Looked from any angle whatsoever, Babu Ram cannot escape the consequence of his acts."

7. As far as co-accused Vijay is concerned, the High Court allowed his appeal by giving him the benefit of doubt as only one witness had alleged about his participation.

8. In respect of the appellants Sunil, Shri Krishan and Ravinder, the High Court observed that Mangat Ram (PW-2), Ashok Kumar (PW-8), Kashmere Lal (PW-9), Darshana (PW-13), Raj Kumar (PW-14) and Sushil Kumar (PW-15), who were all injured in the firing, have categorically deposed that those accused were present with Babu Ram at the time of altercation and they all left simultaneously with Babu Ram and were noticed at the roof top exhorting Babu Ram to fire.

The High Court observed that though there had been minor variations in the testimony of witnesses as to which accused did what, but such minor variations were natural as memory fades with passage of time and it is difficult for anyone to remember each and every minute aspect of the incident. Consequently, by relying on their testimony, all appeals were dismissed.

9. We have heard Sri Sudarshan Rajan, learned counsel for the appellants and Shri Jayant K. Sud, learned Additional Solicitor General, for the State (NCT of Delhi).

Submissions on behalf of appellants

10. The learned counsel for the appellants submitted that it is a case where the principal accused, namely, Babu Ram, had admitted that he opened fire at the mob from his licensed weapon. Once such is the position, the court was required to carefully consider whether the appellants, who were part of the family, were

implicated due to general animosity, by assigning role of exhortation to them. Further, as per prosecution case, gunshots were fired from the roof-top at people who were on the street.

It would thus be difficult for the witnesses present on the street to gauge as to who was exhorting and who was not, particularly, when there were more than three persons at the roof-top. Moreover, it is well settled that mere presence with the assailant is not enough to assume that all of them share common intention with the principal accused and that the criminal act has been done in furtherance of the common intention of all. Otherwise also, the prosecution evidence is not clear whether the gunshots fired at the two deceased i.e., Anil and Vijay were in furtherance of the common intention of all the accused.

Therefore, even if it is assumed that at some stage the appellants had exhorted Babu Ram to fire shots, in absence of clear and cogent evidence that Babu Ram was instigated/exhorted to fire shots at the two deceased, the appellants cannot be convicted for the offence punishable under Section 302 with the aid of Section 34 of the IPC.

Thus, in a worst-case scenario, the appellants can only be convicted under Section 307/34 of the I.P.C. It was argued that since each of the three appellants have already served more than five years of sentence, which they were awarded for offence punishable under Section 307/34 of the I.P.C., their appeals be allowed and their sentence be reduced to the period of sentence already undergone for the offence punishable under Section 307/34 of the I.P.C.

11. In addition to above, the learned counsel for the appellants submitted that the trial of the appellants suffers from a fundamental defect inasmuch as the incriminating circumstance about the appellants exhorting/instigating Babu Ram to fire shots at the two deceased/public/injured, was never put to the appellants while recording their statements under Section 313 of the Code of Criminal Procedure, 1973 (in short, "the Cr.P.C."). Hence, the incriminating circumstance appearing in the evidence qua exhortation/instigation of the main accused by the appellants would have to be eschewed from consideration.

12. The learned counsel for the appellants cited number of decisions on two broad propositions, namely,

(A) As to when, based on the role of exhortation, conviction can be sustained with the aid of Section 34 of the I.P.C. The decisions cited were:

(i) Balu Alias Bala Subramaniam & Another v. State (UT of Pondicherry)1;

(ii) Kulwant Singh alias Kulbansh Singh v. State of Bihar2,

- (iii) Jainul Haque v. State of Bihar³;
- (iv) Hardev Singh & Another v. The State of Punjab⁴;
- (v) Mewa Ram & Another v. State of Rajasthan⁵;
- (vi) Mohan Singh & Another v. State of M.P.⁶;
- (vii) Zahoor & Others v. State of Uttar Pradesh⁷;
- (viii) Bishnupada Sarkar & Another v. State of West Bengal⁸.

(B) Incriminating circumstances not put to the accused while recording his statement under Section 313 of the Cr.P.C. must be eschewed from consideration. The decisions cited were:

- (i) Hate Singh v. State of Madhya Bharat⁹;
- (ii) Sujeet Biswas v. State of Assam¹⁰;
- (iii) Sharad Birdichand Sharda v. State of Maharashtra¹¹;
- (iv) Samsul Haque v. State of Assam¹²; and
- (v) Maheshwar Tigga v. State of Rajasthan¹³.

Submissions on behalf of the State

13. On behalf of the State (NCT of Delhi) it was submitted that, as per the evidence, after the altercation, Babu Ram left the place with the appellants while extending threats that they shall teach a lesson to the other side and their supporters. Soon thereafter, they all appeared at the roof top and the appellants were noticed exhorting Babu Ram to attack the other side and their supporters. Gunshots were fired in furtherance thereof, causing death of two persons and injuries to 26 others.

In such circumstances, all the accused exhibited common intention to cause such bodily injury to persons which they knew it is likely to cause death of the person to whom it is caused. Further, multiple gunshots were fired. Therefore, it is a clear case that the appellants who exhorted the assailant had shared common intention with him.

14. Regarding the incriminating circumstance of exhortation being not put to the accused appellants while recording their statements under Section 313 CrPC, it

was submitted that even if it was not put to them, they suffered no prejudice, which is clear from the following circumstances:

- (a) the appellants were throughout represented by their counsel;
- (b) the statement of witnesses was recorded in presence of the appellants/their counsel;
- (c) their counsel specifically cross-examined the witnesses in respect of their statement qua exhortation by the appellants; and
- (d) the FIR of the incident, which disclosed their role as that of an instigator, was put to them.

It could, therefore, be taken that they were fully aware of the incriminating circumstances appearing against them in the prosecution evidence. Yet, they took no plea before the trial court or the High Court of any kind of prejudice caused to them. Thus, this plea, raised for the first time before this Court, ought not be entertained.

15. In support of his submissions, the learned counsel for the State cited decisions on two broad propositions, namely,

(a) Conviction with the aid of Section 34 of the I.P.C can be recorded for the role of exhortation. The decisions cited were:

(i) Gulab v. State of Uttar Pradesh¹⁴; and

(ii) Sandeep v. State of Haryana¹⁵

(b) Unless prejudice is shown to have been caused to the accused, failure to put any incriminating circumstance, by itself, would not vitiate the trial. The decisions cited were:

(i) Nar Singh v. State of Haryana¹⁶;

(ii) Alister Anthony Pareira v. State of Maharashtra¹⁷; and

(iii) Satyavir Singh Rathi, ACP & Others v. State¹⁸.

Discussion and Analysis

16. We have considered the rival submissions and have perused the record carefully. Before we deal with the submissions, it would be useful to recapitulate

facts which have been found proved, and regarding which there is no serious dispute, namely,

(a) The incident had its genesis in an altercation between two families i.e, Sri Krishan's family on one side and Satpal's family on the other. The reason for the altercation was one family accusing the other of their girls being teased by other family's boys.

(b) All gunshots which caused injuries to the two deceased as well as to twenty-six others, were fired by Babu Ram (nonappellant) who has been convicted and sentenced under Section 302 of the I.P.C.

(c) The gun which Babu Ram used to fire shots was licensed to him.

(d) Babu Ram was present at the time when altercation between the two sides took place.

(e) Babu Ram is brother-in-law of Shri Krishan.

(f) Babu Ram's house opens on Street No. 400 whereas Satpal's house opens on Street No.300. Though exact location of Shri Krishan's house is not disclosed in the site plan prepared in connection with the case, however, from his address, which is disclosed as D-291, Jahangir Puri, Delhi, it appears that his house is near Satpal's house (which is D-294), and on same Street No.300.

17. The place where the incident took place is a congested colony. The location of the two Streets i.e., Nos. 300 and 400 and the houses in between them has been described in detail in paragraph 11 of the High Court's judgment, the correctness of which has not been seriously challenged. Thus, to have a clear picture of the spot, we deem it appropriate to extract paragraph 11 of the impugned judgment below:

"11. As per the two site plans, street No.400 and street No.300 in D Block Jahangir Puri, run parallel to each other along the west-eastern directions. Street No.400 is towards the north and street No.300 is towards the south. The width of street No.400 is 16'6". The width of street No.300 is 15'10". The distance between the two streets is 47'8". This distance between the two streets is not an empty space but consists of a row of houses having a depth of 23'10".

To make it clear, one row of houses being House No.361 to 368 have a depth of 23'10" and these houses abut street No.400. Back to back to these houses are a row of houses bearing No.353 to 359 with each house having a depth of

23â€.10". These houses open towards street No.300. Opposite to the row of houses bearing No.353 to 359 on street No.300 are house Nos.298 to 293.

It is apparent that the doors of house No.353 to 359 open in the southern direction on to street No.300 and the doors of house Nos.298 to 293 open towards the northern direction on to street No.300. On the site plan, the spots where Anil and Vijay were shot at have been marked 1 and 2. They are at a distance of 3â€.6" and 3â€ respectively from the boundary wall of house No.295 and house No.294. Spot where Mangat Ram was shot at is shown at point No.3 which is also at a distance of about 3â€ from the boundary wall of house No.297.

The spot wherefrom Babu Ram is stated to have fired is shown as spot No.4 and is on the roof of house No.354 belonging to Mangat Ram. The site plan shows that house No.366 of Babu Ram is back to back with house No.355 of Ramesh Chand and house No.354 of Mangat Ram is adjacent to the house of Ramesh Chand towards the west of house of Ramesh Chand."

18. From the observations of the High Court extracted above, what transpires is that in between Street Nos.300 and 400 there are two rows of houses, back to back. One row of houses have their opening towards north on Street No.400, whereas the other have their opening towards south on Street No.300. The third row of houses, south of Street No. 300, have their opening towards north on Street No.300. Satpal's house is in that row, whereas Babu Ram's house is towards north, opening on Street No.400.

19. As per the evidence, altercation preceding the incident of firing took place on Street No.300. After the altercation, Babu Ram left that place, went to his house on Street No.400, fetched his gun and fired shots at the public present on Street No.300 from roof of one of the row houses, which, according to the prosecution, is house of Mangat Ram.

A close scrutiny of the site plan would suggest that the place where gunshot injuries were suffered could not have been targeted if gunshots had been fired from the roof top of Babu Ram's house. Therefore, both the courts below disbelieved Babu Ram's plea that he fired gunshots in self-defence to disburse the crowd which had surrounded his house.

Role of the Appellants

20. Now, we shall examine the evidence as regards the role of the appellants. Before we do that, it would be pertinent to note that the two deceased, namely, Anil and Vijay, are not related to Satpal, the person with whom Shri Krishan and his family (i.e., the accused side) had an altercation. Therefore, to show that all

the accused had a common intention to cause bodily harm to persons who suffered injuries including the ones who succumbed to the injuries, prosecution has used a word Himayati (i.e., supporter) of Satpal to describe the victims.

And to bring home the charge against the appellants, the prosecution case is that all the accused persons exhibited common intention as they simultaneously left the place where altercation was taking place to go to Babu Ram's residence to pick up the gun. Not only that, they appeared together at the roof-top when shots were fired on Satpal's supporters.

Some of the testimonies in respect of appellants' role

21. PW-2 (Mangat Ram), brother of deceased Anil, stated that Shri Krishan, his son Sunil, Babu Ram and his son Ravinder after altercation left the spot threatening Lala Satpal and his supporters that they would be taught a lesson; soon thereafter, all of them came to the roof of Babu Ram's house and then jumped on to the roof of PW-2's house, which shares back wall with Babu Ram's house; and from there, Babu Ram opened fire while appellants were exhorting him not to spare Satpal or anyone who had supported him.

22. PW-9, Kashmere Lal, gives a more lucid account of the incident. He states that on 11.11.1998, at about 3 pm, while he was in his house, altercation started between Satpal and Shri Krishan over some incident relating to teasing of Satpal's daughter. In the meantime, Sunil came and so did Babu Ram and his son. They started shouting that they would not spare the people of the Gali (street) as they have harassed Shri Krishan.

Thereafter, all four accused left extending threats. Soon thereafter, they appeared at the roof of Babu Ram's house. Then Babu Ram started firing. The first shot hit Anil. Second shot hit right leg of Mangat Ram. Thereafter, Babu Ram fired indiscriminately, and many people received pellet injuries. When Babu Ram was firing indiscriminately, the other accused, namely, Sunil, Shri Krishan and son of Babu Ram, were instigating Babu Ram not to spare any of Satpal's Himayati (supporter).

23. PW-8 Ashok Kumar, father of deceased Vijay, tried to be specific about the sequence of events. He stated that accused Fauji @ Babu Ram first fired a shot in the air from his gun; then accused shouted that they would not spare anyone; thereafter, Shri Krishan and Sunil told Fauji to fire at persons whom they point at; Ravinder and Vijay also shouted that no one should be spared; simultaneously other accused also told Fauji to fire at persons whom they point at, so that no madadgar (i.e., supporter) of Satpal is spared; then Fauji fired, a bullet hit Anil @ Kala, the deceased, as also Mangat Ram; thereafter, accused

Sunil and Ravinder pointed towards PW-8's son Vijay and exhorted Fauji to fire at him; in consequence, Fauji fired at PW-8's son, the shot hit him and he died; whereafter, Fauji started firing indiscriminately resulting in injuries to several persons.

24. During cross-examination, Ashok Kumar (PW- 8) stated that,- he had witnessed the altercation; after the accused left, he went behind them; he, however, did not notice if any of his relatives were near the place of altercation; the accused went towards Babu Ram's house whereas he went to his own house; after reaching his house, he put on his shoes, then, after 4/5 minutes, he heard gun shots; he immediately came out of his house to notice people running helter-skelter; the firing continued for about 20/25 minutes; he did not sustain any injury and no pellet came towards his house; he had no enmity with the accused prior to the incident, rather they had been attending each other's functions; accused had cordial relations with the deceased Vijay; he had never appeared as a witness against the accused in any other case nor made any complaint against them; he and his family never favoured Satpal; his elder son, besides the deceased Vijay, was in the house at that time.

25. At this stage, we may observe that Mangat Ram (PW-2) (i.e. brother of the deceased Anil) too, was not aware of any kind of animosity between any of the accused and Anil. There is no clarity in PW-2's statement about Anil taking side of Satpal while he was in an altercation with Shri Krishan.

In fact, during cross-examination, PW-2 stated that,- the altercation took place at a distance of about 10-12 paces from the place where he was lying on his cot; at that time, Sushil (his other brother) and Anil (the deceased) were inside the house; at the time of altercation between Lala and Shri Krishan, Ravinder, Vijay and Babu were not there; Babu Ram arrived at the place of altercation at about 2.45 pm and stayed for about 10 minutes; he cannot say as to how many persons came there; he cannot tell as to how many persons remained with Satpal, when Babu Ram left. PW-2 specifically added that neither he nor his brother Anil were supporter of anyone.

He, however, clarified that he saw accused standing on the roof, five minutes after they left the place of altercation. He also added that from the place where he was lying on the cot, Babu Ram could not be seen. Further, he could not tell as to how many minutes the firing continued as he, and his brother, sustained injuries and were removed to the Hospital. In respect of the role played by the appellants, PW-2 stated that his brother Anil was coming from the other side, when Babu Ram was instigated to fire at him. PW-2 clarified that neither he nor Anil had any previous enmity with Babu Ram or any other accused person and that neither he nor his brother ever supported Lala Satpal.

26. A close examination of the statement of these witnesses would reveal that, though they disclose the presence of the accused-appellants with Babu Ram at the roof-top as also that they were instigating Babu Ram not to spare the supporters of Satpal, they are not specific and consistent about the two deceased (i.e., Anil and Vijay) being targeted by Babu Ram at the instigation of the present appellants. Absence of cogent evidence that Babu Ram was instigated/exhorted to fire shots at the two deceased assumes importance as, from the testimony of these witnesses, neither Vijay nor Anil was a supporter of the rival faction i.e., Satpal with whom the accused party had animosity.

In such circumstances, the question that would arise is whether for the murder of the two deceased, namely, Vijay and Anil, could it be said that the appellants shared a common intention with the assailant Babu Ram so as to warrant their conviction under Section 302 I.P.C. with the aid of section 34 I.P.C. Whether based on the evidence led, the appellants could be convicted for the offence of murder of Anil and Vijay with the aid of Section 34 I.P.C. or only for the offence punishable under Section 307 I.P.C. read with 34 I.P.C.

27. Before we dwell on the aforesaid issue, it would be useful to examine the law as to when conviction with the aid of Section 34 of the I.P.C. could be made. In *Pandurang, Tukia and Bhillia v. State of Hyderabad*¹⁹, this Court observed:

"33. Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: *Mahbub Shah v. King-Emperor*.

Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan.

In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case: *Barendra Kumar Ghosh v. King- Emperor* and *Mahbub Shah v. King-Emperor*. As their Lordships say in the latter case, "the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice.

34. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example, when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose."

(Emphasis supplied)

28. In *Balu alias Bala Subramaniam*¹, this Court held:

"11. To invoke Section 34 IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:

(i) there was common intention on the part of several persons to commit a particular crime, and

(ii) the crime was actually committed by them in furtherance of that common intention.

The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention."

(Emphasis supplied)

After observing as above, in paragraph 15, it was observed:

"15. Under Section 34 IPC, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion

whether the accused had a common intention to commit an offence with which they could be convicted."

(Emphasis Supplied)

29. What is clear from the decisions noticed above is, that to fasten liability with the aid of Section 34 of the I.P.C. what must necessarily be proved is a common intention to commit the crime actually committed and each accused person can be convicted of that crime, only if it is in furtherance of common intention of all. Common intention pre-supposes a prior concert, though pre-concert in the sense of a distinct previous plan is not necessary as common intention to bring about a particular result may develop on the spot.

The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted.

30. In *Mewa Ram & Another*⁵, the accused appellant had exhorted to kill the complainant, but the person killed was someone else. There was no evidence to indicate that the accused-appellant had stated anything about killing the deceased. In that backdrop, this Court while holding that the accused-appellant could not be convicted with the aid of Section 34 of the I.P.C., by placing reliance on earlier decisions of this Court, observed:

"12. What is to be noticed from the aforesaid is that exhortation given by appellant Mohan Lal was to kill complainant Harbans Singh. There is no evidence, apart from the said exhortation which has been produced by the prosecution to show that the appellant Mohan Lal had stated anything about the killing of the deceased Deputy Singh.

This is the fundamental mistake committed by the Trial Court and repeated by the High Court in using the said exhortation on the part of Mohan Lal insofar as killing of Deputy Singh is concerned. Under what circumstances, Deputy Singh was shot at by Mewa Lal is not discernible from the record when the dispute was between the two brothers (appellants herein) on the one hand and complainant Harbans Singh on the other. On these facts, it cannot at all be said that there was any common intention of the accused persons to kill Deputy Singh.

13. It is noticed that there is fundamental difference between common intention and joint intention. Section 34 of the I.P.C. talks of common intention which is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common

intention and to fasten with the same liability as that of the main accused who was perpetrator of the crime."

31. Reverting to the case at hand, when we examine the facts of this case, we notice that the two deceased were Anil and Vijay. The accused party had no animosity or grudge qua them (i.e., the two deceased). The prosecution evidence is that all the four accused left together from the place where altercation had occurred and soon all of them were seen at the roof-top of PW-2's house from where Babu Ram opened fire with a view to teach a lesson to those who had supported the rival faction.

Neither PW-2 nor PW- 8, whose brother and son, respectively, had died, stated that the two deceased had supported Satpal (i.e., the rival group). Rather, according to them, the two deceased had no enmity with any of the accused persons. Further, statements of witnesses are not consistent as to establish beyond reasonable doubt that the appellants had exhorted Babu Ram to fire shots at Anil or Vijay i.e., the two deceased. The evidence, which is consistent, is about exhorting Babu Ram not to spare Satpal's supporters.

But there is no evidence that the two deceased were Satpal's supporters. In our view, that general exhortation is not sufficient to fasten them with vicarious liability for shots fired by Babu Ram at the two deceased, particularly, when the testimony of witnesses is not consistent whether the two deceased were shot before or after the exhortation made by the appellants. However, what is certain from the evidence is, that the assailant Babu Ram had the gun as well as motive to use it, inasmuch as his relative Shri Krishan was insulted during altercation.

Moreover, Babu Ram had taken a vow to teach supporters of the other side a lesson. In that kind of a scenario, even if Babu Ram had not been instigated by any of the other accused, he might have fired from his weapon to stamp his authority and, therefore, killing of the two deceased could be his own individual act for which he alone would be liable.

In these circumstances, to clinch a conviction of the appellants for the murder of the two deceased with the aid of Section 34 of the I.P.C., the prosecution was required to lead clear and cogent evidence that the shots fired by Babu Ram at the two deceased were in furtherance of common intention of all. In absence whereof, as is in the case at hand, in our considered view, it would be extremely unsafe to convict the appellants with the aid of Section 34 of the I.P.C. for the offence of murder.

32. Now, the question that falls for our consideration is whether the appellants could escape their liability for the offence punishable under Section 307 with the

aid of Section 34 of the I.P.C. In our view, the answer to it would depend on whether the appellants including Babu Ram committed any one or more of the acts specified in Section 300 of the I.P.C.20 in furtherance of common intention of all, had the person(s) injured succumbed to their injuries.

33. The evidence in the instant case is that indiscriminate firing continued for long, some say for 20 to 25 minutes. As many as twenty-six persons on Street No.300 received pellet injuries. Notably, 16 empty cartridges were seized from Babu Ram. Evidence is that the appellants were with the accused Babu Ram, exhorting him not to spare Satpal's supporters, and pointing at targets.

Though, evidence might not be specific as to who in particular was targeted at the behest of the appellants but the very fact that indiscriminate firing continued for long, say 20-25 minutes and the appellants were found present and exhorting Babu Ram to fire, in our view, it could be said with certainty that the appellants had knowledge that the act which Babu Ram was exhorted to commit was so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death of a person (See Section 300 (Fourthly) of the I.P.C along with illustration (d) thereto). Therefore, the gunshots fired by Babu Ram at several by-standers/supporters of Satpal, if not all, could be said to be a criminal act done by several persons in furtherance of the common intention of all.

A fortiori, even though it might not be safe to hold the appellants vicariously liable for the offence of murder of the two deceased persons for the reasons already detailed above, but looking at the nature of the incident, the number of persons injured and the role attributed to the appellants, we are of the considered view that the appellants are liable to be convicted for the offence punishable under Section 307 with the aid of Section 34 of the I.P.C. Thus, in our considered view, the finding of the courts below to that extent does not call for any interference. Effect of not putting the incriminating circumstance of exhortation to the appellants while recording their statements under Section 313 of the Criminal Procedure Code, 1973.

34. The question that now falls for our consideration is whether, on account of not putting the incriminating circumstance of exhortation to the appellants while recording their statements under Section 313 CrPC, appellants' conviction with the aid of Section 34 of the I.P.C. stood vitiated.

35. A perusal of the record would reflect that all the accused including the appellants were charged by a common charge framing order dated 17.01.2001, which reads as under:

"I, R. K. Sharma, Additional Sessions Judge, Delhi do hereby charge Babu Ram @ Fauji son of Raghuvver Dayal; Shri Krishan son of Jwala Prasad, Sunil son of Shri Krishan; Vijay son of Lala Ram and Ravinder son of Babu Ram as under:

That on 11.11.1998 at 3 pm at Gali D-300 near House No. 286, Jahangir Puri, Delhi within the jurisdiction of P.S. Jahangir Puri, Delhi you all in furtherance of your common intention did commit murder of deceased Anil Kumar @ Kala and Vijay by intentionally killing them and thus committed an offence punishable under Section 302/34 I.P.C.

Secondly, on the said date, time and place, you all in furtherance of common intention caused injuries to 26 persons, namely, Smt. Sateshwari, Mangat Ram, Anju, Pradeep, Sunny, Ramdev, Marium, Naim, Zafar, Matluf Ali, Saleem, Zubeda, Raj Kumar, Tarun, Bundu, Darshana, Mohd. Shahid, Vasudev, Priya Sanjay, Chander Kala, Mohini Devi, Anwari, Gulsher, Hamid Mohd. and Shahid Ahmed with such intention and under such circumstances that if by the said injuries the accused appellants had caused the death of said persons, you would have been guilty of murder and thus committed an offence punishable under Section 307/34 I.P.C. and within my cognizance.

And I hereby direct that you all be tried by this court for the said offence.

Signed

ASJ,

Dated 17.01.2001"

Delhi

36. As exemplars, some of the questions that were put to the accused appellants to elicit their response, under Section 313 CrPC, to the incriminating circumstances appearing against them in the prosecution evidence, are being extracted below:

"(i) It is in evidence against you that on 11.11.98 a statement was made by one Mangat Ram, collectively contained in ruqqa Ex. PW2/A on which formal FIR was recorded, carbon copy of which is Ex.PW19/E. What have you to say?

(ii) It is further in evidence against you that on 11.11.1998 at about 3 pm at Gali No.D-300 wali, near House No. 286, Jahangir Puri, you along with other co-accused in furtherance of common intention did commit the murder of Anil Kumar @ Kala and Vijay by intentionally killing them. What have you to say?

(iii) It is further in evidence against you that on the said date, time and place, you along with your co-accused in furtherance of common intention caused injuries to 26 persons, namely, Smt. Sateshwari, Mangat Ram, Anju, Pradeep, Sunny, Ramdev, Marium, Naim, Zafar, Mutluf Ali, Salma, Zubeda, Raj Kumar,

Tarun, Bundu, Darshana, Mohd. Shahid, Vasudev, Priya Sanjay, Chander Kala, Mohini Devi, Anwar, Gulshan, Hamid Mohd. and Shahid Ahmed with such intention and under such circumstances that if by the said injuries you had caused the death of said person, you would have been guilty of murder and thus committed an offence under Section 307/34 I.P.C. What have you to say?

(iv) It is further in evidence against you that on the said date, time and place, co-accused Babu Ram used a firearm while committing the offences punishable under Section 302/307/34 I.P.C and thus committed an offence u/s 27 of Arms Act. What have you to say?"

Apart from the incriminating circumstances extracted above, various other pieces of evidence such as injury reports, recovery memorandums, autopsy/medical reports, etc. were put to the accused appellants while recording their statements under Section 313 CrPC.

37. The appellants denied the incriminating circumstances and stated that, - they were not present at the spot; they have been falsely implicated in this case because of being relatives of Sushil and Babu Ram; there was commotion in the locality, therefore they went to the house of their relatives to know the truth; there they were detained by the police and falsely implicated at the instance of the complainant.

38. On perusal of the records pertaining to recording of statement under Section 313 CrPC, we find that the gist of the testimony of various witnesses delineating the exact role played by the appellants was not put to the appellants for the purposes of recording their statement. However, whether this by itself would vitiate their conviction is a question which needs determination.

39. In *Tara Singh v. State*²¹, this Court had the occasion to deal with the object of Section 342 of the Criminal Procedure Code, 1898 which is in pari materia Section 313 CrPC. In that context, speaking for the Bench, Vivian Bose, J. observed:

"38. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question.

Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or

confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned."

(Emphasis supplied)

40. In *Alister Anthony Pareira v. State of Maharashtra* 22 , summarising the law relating to examination of an accused under Section 313 CrPC, this Court observed:

"61. From the above, the legal position appears to be this: the accused must be apprised of incriminating evidence and materials brought in by the prosecution against him to enable him to explain and respond to such evidence and material.

Failure in not drawing the attention of the accused to the incriminating evidence and inculpatory materials brought in by prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law; firstly, if having regard to all the questions put to him, he was afforded an opportunity to explain what he wanted to say in respect of prosecution case against him and secondly, such omission has not caused prejudice to him resulting in failure of justice. The burden is on the accused to establish that by not apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him, a prejudice has been caused resulting in miscarriage of justice."

(Emphasis supplied)

41. In *Nar Singh*¹⁶, this Court had the occasion to review a series of decisions and summarise the law as to the courses available whenever a plea is raised before an appellate court that there has been a failure in putting certain incriminating circumstances to the accused while recording his statement under Section 313 CrPC. In that context, it was observed:

"30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is raised in the appellate court, courses available to the appellate court can be briefly summarised as under:

30.1 Whenever a plea of non-compliance of Section 313 CrPC is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer

the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer.

30.2 In the facts and circumstances of the case, if the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

30.3 If the appellate court is of the opinion that noncompliance with the provisions of Section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 CrPC and the trial Judge may be directed to examine the accused afresh and defence witness, if any, and dispose of the matter afresh.

30.4 The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused."

(Emphasis supplied)

42. In *Shobhit Chamar & Another v. State of Bihar* 23, this Court, after examining a series of decisions, held that a challenge to the conviction based on non-compliance of Section 313 CrPC first time in the appeal before the Supreme Court cannot be entertained unless the appellants demonstrate that prejudice has been caused to them. The relevant observations, as contained in paragraph 24, are extracted below:

"24. We have perused all these reported decisions relied upon by the learned advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance of Section 313 CrPC first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them.

In the present case as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eyewitnesses and relevant questions with reference to this evidence were put to the appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the appellants."

(Emphasis supplied)

43. Building on the observations of this Court in *Shobhit Chamar*²², which have been extracted above, in *Satyavir Singh Rathi, ACP & Others*¹⁸, it was observed:

"77. These observations proceed on the principle that if an objection as to the Section 313 statement is taken at the earliest stage, the court can make good the defect and record an additional statement as that would be in the interest of all but if the matter is allowed to linger on and the objections are taken belatedly it would be a difficult situation for the prosecution as well as the accused.

78. In the case before us, as already indicated, the objection as to the defective 313 statements had not been raised in the trial court. We must assume therefore that no prejudice had been felt by the appellants even assuming that some incriminating circumstances in the prosecution story had been left out. We also accept that most of the fifteen questions that have been put before us by Mr. Sharan, are inferences drawn by the trial court on the evidence. The challenge on this aspect made by the learned counsel for the appellants, is also repelled."

(Emphasis supplied)

44. From the decisions noticed above, the legal position that emerges, inter-alia, is that to enable an accused to explain the circumstances appearing in the evidence against him, all the incriminating circumstances appearing against him in the evidence must be put to him. But where there has been a failure in putting those circumstances to the accused, the same would not ipso facto vitiate the trial unless it is shown that its non-compliance has prejudiced the accused. Where there is a delay in raising the plea, or the plea is raised for the first time in this Court, it could be assumed that no prejudice had been felt by the accused.

45. In the instant case, though we could not find that the incriminating circumstance pertaining to appellants exhorting the main accused Babu Ram was specifically put to the appellants, they were aware of the prosecution case against them as, vide question no.(i), they were apprised of the FIR lodged by PW-2 which delineated their role as the ones who exhorted the main accused Babu Ram to fire gunshots. Further, vide question no.(iv) it was clarified that gunshots were fired by Babu Ram. And questions (ii) and (iii) indicated that the appellants were being proceeded against as they had participated in the crime by sharing common intention with the main accused.

Taking the above into account as also that the appellants were throughout represented by their counsel and had cross-examined the prosecution witnesses, yet they raised no such plea, either before the trial court or the High Court, it can

safely be assumed that the appellants had suffered no prejudice on that count. More so, when the case of the appellants was of complete denial i.e., that they were not present at the time of occurrence, which was disbelieved by the trial court as well as the High Court. We are therefore of the considered view that the conviction of the appellants is not vitiated for alleged non-compliance of the provisions of Section 313 CrPC.

Conclusion

46. In view of our discussion above, though we find the conviction of the appellants under Section 302 read with Section 34 of the I.P.C. unsustainable, we uphold the conviction of the appellants under Section 307 read with Section 34 of the I.P.C. and hereby affirm the sentence awarded to the appellants for the offence punishable under Section 307/34 of the I.P.C. Consequently, the appeals are partly allowed.

The conviction and sentence of the appellants under Section 302 read with Section 34 of the I.P.C. is set aside and the appellants are acquitted of the said charge. However, their conviction and sentence under Section 307 read with Section 34 of the I.P.C. as awarded by the trial court and affirmed by the High Court is maintained and hereby affirmed.

The appellants are reported to be on bail. Their bail bonds are cancelled. They shall surrender forthwith to serve out the remaining sentence, if any, as awarded by the trial court under Section 307/34 of the I.P.C. If the appellants have already served out the sentence awarded to them under Section 307/34 I.P.C., they need not be taken into custody, after verification of the records/custody certificates.

47. With the aforesaid directions, all the three appeals stand disposed of.

.....**J. (Hrishikesh Roy)**

.....**J. (Manoj Misra)**

New Delhi;

September 21, 2023

1 (2016) 15 SCC 471

2 (2007) 15 SCC 670

3 (1974) 3 SCC 543

4 (1975) 3 SCC 731

5 (2017) 11 SCC 272

6 (1999) 2 SCC 428

7 (2011) 15 SCC 218

8 (2012) 11 SCC 597

9 AIR 1953 SC 468

10 (2013) 12 SCC 406

11 (1984) 4 SCC 116

12 (2019) 18 SCC 161

13 (2020) 10 SCC 108

14 (2022) 12 SCC 677

15 2021 SCC Online SC 642

16 (2015) 1 SCC 496

17 (2012) 2 SCC 648

18 (2011) 6 SCC 1

19 AIR 1955 SC 216

20 "300. Murder.- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-

Secondly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual."

21 AIR 1951 SC 441: 1951 SCC Online SC 49

22 (2012) 2 SCC 648

23 (1998) 3 SCC 455

IN THE SUPREME COURT OF INDIA

Samir Kumar Majumder
Vs.
Union of India and Ors.

Civil Appeal No. 6027 of 2014

HEADNOTE – Constructive Res Judicata – No party should be vexed twice in a litigation for one and the same cause

JUDGMENT

K.V. Viswanathan, J

1. Samir Kumar Majumder (the appellant) was a school teacher at the Railway Higher Secondary School, Alipurduar Junction. He taught mathematics to the school children. Aggrieved by the judgment of the High Court at Calcutta (hereinafter referred to as 'the High Court') dated 19.07.2011 in W.P.C.T. No. 130 of 2009, the appellant is before us in appeal. By the said judgment, the High Court denied him absorption as an Assistant Teacher in the Higher Secondary Section and also rejected his claim for continuity in service.

Relevant Facts:

2. The appellant was initially appointed as a Substitute Teacher on 05.12.1989. According to him, artificial breaks were created in his service by terminating him on the eve of the school vacations and thereafter reappointing him. The appellant states that he was terminated first before the summer vacations on 09.06.1990 and was re-engaged on 24.07.1990. His further case is that he was again terminated on 22.09.1990, on the eve of Puja Holidays. According to him, he was re-engaged on 01.11.1990.

3. When the matter stood thus, the appellant, fearing further creation of artificial breaks filed an application being O.A. No. 209 of 1990 before the Central Administrative Tribunal (for short 'the Tribunal') Guwahati Bench. He prayed for setting aside of the letters of termination dated 09.06.1990 and 19.09.1990 and also prayed for regularization of his service and for salary during the period of breaks.

4. The Tribunal passed an interim order on 03.12.1990 and it is an admitted fact that he continued till 12.11.1994 when his services were again terminated, after the Tribunal had dismissed his application on 31.10.1994.

5. The Tribunal, while dismissing his application on 31.10.1994, solely relied on another order of the same Tribunal, passed on the same day, in O.A. No. 149(G) of 1989 in the case of Smt. Jayasree Deb Roy (Dutta) vs. The Union of India & Ors. Para 4 of the order in the appellant's case is important, which we extract herein below:

"4. We have examined the question of regularization of substitute teachers in detail in our order on O.A. No. 149(G) of 1989 passed today. We have come to the conclusion that the substitute teachers cannot claim regularization as a matter of right. We have also held that selection by the Railway Recruitment Board is essential for regular appointment.

For the same reasons we hold that the applicant is not entitled to be granted any relief of regularization. Moreover, in the instant case although the applicant had appeared before the Recruitment Board he was not selected. That does not entitle him to ask for any relief of regularization on the basis of his earlier service as substitute teacher."

6. O.A. No. 149(G) of 1989 was carried in Appeal to this Court by way of Civil Appeal No. 9424 of 1995 along with the batch of matters of similarly situated candidates, which was disposed of on 13.10.1995. The operative portion of the said order reads as under:-

"The appellants were, therefore, entitled to the benefit conferred under para 5.1 of the circular (Circular R.B. No. 12/91 M.C. No. 20/91 E(NG)/90/SC/Master) dated January 29, 1991, and on that basis the appellants are entitled to absorption on regular basis through the process of screening by the screening committee in accordance with the said provision and they are not required to face selection by the Railway Recruitment Board for the purpose of regular absorption.

The judgment of the Tribunal holding otherwise cannot, therefore, be upheld and has to be set aside. After the impugned Judgment of the Tribunal, the services of the appellants have been terminated. In case the appellants are found suitable for absorption by the Screening Committee, they should be appointed on regular basis on the post that was held by them and they would also be entitled to continuity of service.

The appeals are, therefore, allowed, the judgments of the Tribunal dated October 31, 1994 in the applications filed by the appellants are set aside and the said applications are allowed with the direction that the appellants shall be considered

for absorption on regular basis on the post of Assistant Teacher by the Screening Committee in accordance with para 5.1 of the master circular dated January 29, 1991, and in case the appellants are found suitable for such absorption by the Screening Committee, they shall be restored to the post held by them with continuity of service.

The process of selection by the Screening Committee as per directions in this order shall be completed within a period of three months from the receipt of the copy of this order. A copy of this order be sent to the Chief Personnel Officer, North East Frontier Railway, Maligaon, Guwahati. By our order dated March 27, 1995, we had directed that appointment may not be made on six posts of school teachers. The said order shall continue till the Screening Committee completes the process of screening."

7. The appellant too carried the matter from the Tribunal to this Court. His matter was disposed of on 15.02.1996 in the following terms:-

"These appeals relate to regular absorption of the appellants who are working as substitute teachers in the Railways. In the impugned judgment the Central Administrative Tribunal has observed that the appellants should be given an opportunity to appear before the Selection Board if they are otherwise eligible as and when such selection is made and has expressed the hope that the respondents would try to accommodate them even on temporary basis if there happens to be any casual vacancy available from time to time and for that purpose they may be placed on waiting list of substitute teachers.

The submission of Shri Puri, the learned counsel appearing for the appellants, is that the appellants who have crossed the age bar may not be eligible for such consideration. Having regard to the facts and circumstances of these cases, it is directed that if the appellants have crossed the prescribed maximum age, they may be considered for regular selection by giving relaxation in that regard. But such relaxation shall be confined to one opportunity for consideration for such selection. The appeals are disposed of accordingly. No order as to costs."

8. Even though textually, the orders may appear different, the respondent-authorities rightly acted in terms of the true purport of the order. They subjected the appellant also to the process of screening by the Screening Committee in accordance with para 5.1 of the Master Circular dated 29.01.1991 (hereinafter referred to as 'the Master Circular dated 29.01.1991')

9. After subjecting the appellant for screening, by an order of 02.01.1998, the appellant was appointed as Primary Teacher (Bengali Medium) in the Railway Higher Secondary School, Alipurduar Junction against an existing vacancy.

10. Being aggrieved, the appellant filed Original Application No. 978 of 1998 before the Central Administrative Tribunal, Calcutta Bench.

11. The grievance was that firstly, the appellant should have been absorbed in the post of Assistant Teacher instead of being absorbed as a Primary Teacher with admissible continuity of service in the pay-scale of Rs.5500-9000 and not Rs.4500-7000 that was now offered under the 02.01.1998 order; secondly, the appellant is entitled to the pay-scale and allowance admissible to the post of Assistant Teacher Grade- I, namely, Rs.1640-2900 from 05.12.1989 instead of the payscale of Rs.1200-2040 that was offered. Thirdly, that under the Master Circular dated 29.01.1991, a Substitute School Teacher who acquires temporary status, after putting in continuous service for three months, is entitled to continuity in service as prescribed therein.

12. At this stage, we can profitably refer the order dated 28.12.1998 passed on the aspect of continuity of service with regard to these teachers who were currently absorbed. The order reads as under:

"Sub:- Continuity of Service on regular absorption

In compliance with Judgment of Hon'ble Supreme Court of India and CAT/Guwahati dated 13-10-95, 15- 2-96. 2-1-96 and 7-10-96, the following substitute teachers are absorbed as Primary teacher (Bengali Medium) and posted in Railway Schools.

1. Smt. Jayashree Deb Roy (Dutta)
2. Smt. Ratna Roy.
3. Shri Subal Chandra Chakraborty
4. Smt. Anupama Bhowmick
5. Shri Pijush Kanti Das
6. Smt.Radha Chakraborty
7. Shri S. K. Majumder.

The past service rendered by (1) Smt. Jayashree Deb Roy (Dutta) (2) Smt. Ratna Roy (3) Shri Subal Chandra Chakraborty (4) Smt. Anupama Bhowmick and Shri Pijush Kanti Das as Substitute teacher in different spells may be taken into account for all purpose except Seniority from the date of acquiring of temporary status with treating breaks as Dies-non.

However, the Hon'ble Court has not directed any specific order regarding Continuity of service in favour of Smt. Radha Chakraborty and Shri S.K. Majumder and as such the date of appointment will be the date of regular appointment after regularization by Screening Committee. This has the approval of Competent authority."

13. As will be seen from the penultimate paragraph of the letter dated 28.12.1998, extracted hereinabove, the only reason that the appellant was denied continuity of service while others were granted was that this Court had not made any order regarding continuity of service.

All other teachers, including Jayashree Deb Roy (Dutta) [applicant in O.A. No. 149(G) of 1989] were granted continuity of service and the past service rendered by them as substitute Teacher in different spells was taken into account for all purposes except seniority from the date of acquiring of temporary status by treating breaks as dies non. (A day on which no legal business is carried on).

14. The respondent-authorities defended their orders before the Central Administrative Tribunal, Calcutta Bench.

Findings of the courts below:

15. The Central Administrative Tribunal, Calcutta Bench, by its judgment of 28.11.2008, held that the appellant had only been appointed as a primary teacher on 05.12.1989 in the pay-scale of Rs.1200-2040; that functioning as a mathematics teacher for Classes XI and XII, as a stop-gap measure, would not entitle him the rights of a regular appointee to the post of Post Graduate Teacher; that the orders of this Court did not, in the appellant's case, direct specifically regarding continuity of service, as was done in the other cases and the appellant's case being one of regular absorption, no continuity of service can be given to him. Holding so, the Central Administrative Tribunal, Calcutta Bench dismissed the application of the appellant.

16. The appellant filed a Writ Petition before the High Court at Calcutta. The High Court once again, relying on the order of this Court, held that the benefit of continuous service was specifically rejected in the case of the appellant. So holding, the High Court upheld the order of the Central Administrative Tribunal, Calcutta Bench.

17. The appellant is before us in Appeal.

Contentions:

18. We have heard Ms. Uttara Babbar, learned counsel for the appellant and Mr. Nachiketa Joshi, learned counsel for the Union of India. Both the learned counsel have painstakingly taken us through the records of the case and presented their respective points of view very ably.

19. Ms. Uttara Babbar, learned counsel for the appellant, contends that under the Master Circular dated 29.01.1991, Clause 4.3, 5.1 and 6 would apply to the case

of the appellant. According to her, on completion of three months continuous service, the appellant acquired the temporary status under Clause 4.3; that under Clause 5, Substitutes, who have acquired temporary status were to be screened by a Screening Committee and not by Selection Boards for the purpose of absorption, and under Clause 6, the date of appointment of a substitute to be recorded in the service book against the column "date of appointment" should be the date on which the substitute attains a temporary status after continuous service of three months, if the same is followed by his/her regular absorption. According to the learned counsel, only for those who do not acquire temporary status and who are regularly appointed, the date of appointment would be the date when they are absorbed.

20. According to the learned counsel, the appellant having completed three months of continuous service as a substitute teacher is entitled to reckon his date of appointment as 04.03.1990 (on completion of three months) since he now stands duly absorbed by the order of 02.01.1998.

21. According to the learned counsel, the appellant ought to have been absorbed as Assistant Teacher since he worked as a substitute Assistant Teacher and taught Classes XI and XII. Her further alternative case is if he has to be only considered as absorbed under the category of Primary Teacher, then he should be entitled to the benefit under the Master Circular dated 29.01.1991 and should be entitled to reckon his service under Clause 6 of the said Circular from 04.03.1990. Learned counsel further contends that the order of this Court in the case of the appellant dated 15.02.1996 should be read in conjunction with the order of this Court dated 13.10.1995 in the case of Smt. Jayasree Deb Roy (Dutta) - applicant in O.A. No. 149(G) of 1989.

Learned counsel lays particular emphasis on the fact that the Tribunal in the appellant's case in O.A. No. 209 of 1990 had wholly relied on the order in the case of O.A. No. 149(G) of 1989 (the case of Smt. Jayasree Deb Roy (Dutta)). Reiterating para 4 of the said order, learned counsel contends that O.A. No. 209 of 1990 of the appellant was dismissed for the same reasons that O.A. No. 149(G) of 1989 was dismissed. Learned counsel further emphasizes the fact that in C.A. No. 9424 of 1995, by order dated 13.10.1995, this Court in the case of Smt. Jayasree Deb Roy (Dutta) had specifically recorded that the judgment of the Tribunal in O.A. No. 149(G) of 1989 was set aside.

22. Learned counsel further contends that even the authorities so understood the orders of this Court and it is for that reason that they subjected the appellant also to a screening before the Screening Committee before the absorption on 02.01.1998. Learned counsel contends that, having done so, there was no plausible reason to discriminate the case of the appellant when it came to the

grant of relief regarding continuity of service on the ground that this Court had not made any specific order regarding continuity of service.

23. Learned counsel contends that the grant of age bar relaxation can only be understood as a grant of additional relief and this cannot be read to mean that there was denial of the relief of continuity of service, if the appellants' were found entitled for absorption which they ultimately were found to be entitled to.

24. Mr. Nachiketa Joshi, learned counsel for the Union of India, vehemently opposed the above submissions. Learned counsel, defending the orders of the courts below would submit that the claim for absorption as Assistant Teacher was totally unjustified. According to the learned counsel, the appellant was appointed in 1989 only as a substitute primary teacher in the pay-scale of the primary teacher and hence merely on the basis of the claim that some stop-gap classes XI and XII were taken, no plea for absorption as Assistant Teacher could be justified/made.

He defended the order of absorption dated 02.01.1998 and also contended that the authorities were justified in passing the order of 28.12.1998 denying continuity of service for the period before 02.01.1998, since there was a clear distinction between the judgment of this Court in the case of Smt. Jayasree Deb Roy (Dutta) and others in the case of the appellant.

25. Drawing attention to the orders of this Court in the case of Smt. Jayashree Deb Roy (Dutta) vs. Union of India and Ors. (C.A. No. 9424 of 1995) arising out of O.A. No. 149(G) of 1989, learned counsel contends that in the case of Smt. Jayasree Deb Roy (Dutta) (supra), there was a specific finding that the appellants in that case were entitled to continuity of service in accordance with para 5.1 of the Master Circular dated 29.01.1991 in the event the Screening Committee found them fit for absorption.

26. Contrasting this with the judgment of this Court in the appellant's case, learned counsel would contend that no such direction for granting continuity of service in the event of absorption was given in the appellant's case.

27. Learned counsel would contend that even factually the case of the appellant was different from the case of Smt. Jayasree Deb Roy (Dutta) inasmuch as Smt. Jayasree Deb Roy (Dutta) was in service on the date of absorption, while the appellant was not. This submission is seriously disputed by Ms. Uttara Babbar. Nothing much however turns on this last submission of the counsel for the respondents.

Reasons and Conclusion:

28. We have considered the rival contentions and perused the records.

Claim for absorption as Assistant Teacher - Higher Secondary Section:

29. We are of the view that the appellant's claim for absorption as Assistant Teacher in the Higher Secondary Section in the pay-scale of Rs.5500-9000 is not tenable. The appellant was appointed as a substitute teacher in the payscale of a primary teacher. In fact, when he filed the first round of proceedings in O.A. No. 209 of 1991, no plea was raised that he worked as an Assistant Teacher in the Higher Secondary Section.

Even when he obtained interim orders from the Tribunal on 03.12.1990, it was only to the effect that the services of the appellant should not be dispensed with without the leave of the Court. Even before the Tribunal, the argument was only about regularization. Before this Court too, no claim for regularization as Assistant Teacher in the Higher Secondary Section was made.

30. The contention now raised in the present round of proceedings (O.A. No. 978 of 1998) for absorption as Assistant Teacher in the Higher Secondary Section is strongly refuted by the respondents by pointing out that his engagement as a substitute teacher was only in the pay-scale of Rs.1200-2040 which was the scale for the primary teacher. They contend that his claim that he was allowed to take classes for XI and XII is unfounded. No doubt, the Central Administrative Tribunal, Calcutta Bench has recorded that the applicant had functioned as a mathematics teacher for Class XI and XII as a stop-gap measure.

31. This issue, however, need not detain the Court any longer as at no point in the first round of proceedings, the appellant made such a claim; the Screening Committee having considered him, pursuant to the orders of this Court, has thought it fit to absorb him only as a primary teacher; the Screening Committee itself was pursuant to the orders of this Court and based on the Master Circular of 29.01.1991 wherein the claims of the candidates like the appellant were examined; the records of his appointment as a substitute teacher admittedly show that he was only appointed as a substitute primary teacher; it is on the completion of three months as substitute primary teacher that he acquired temporary status and on absorption now he became entitled to certain benefits under the Circular which we have elaborated herein above.

32. In the earlier round of proceedings culminating in the order of this Court dated 15.02.1996, this issue was never raised. His claim for absorption as an assistant teacher in the Higher Secondary Section is clearly barred by constructive res judicata.

Law on Constructive Res Judicata:

33. Almost two centuries ago, in *Henderson vs. Henderson*, (1843) 3 Hare, 100, the Vice-Chancellor Sir James Wigram felicitously puts the principle thus:-

"In trying this question I believe I state the rule of the Court correctly when I say that, where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case.

The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

34. This principle popularly known as the doctrine of constructive *res judicata*, based on the might and ought theory, has been recognized by this Court in several judgments. In *Maharashtra Vikrikar Karamchari Sangathan vs. State of Maharashtra and Another*, (2000) 2 SCC 552, this Court held as under:-

"22. It was then contended on behalf of the appellants that neither the Recruitment Rules of 1971 nor the Seniority Rules of 1982 provided for carrying forward the vacancies falling in either category. In the absence of such rules which specifically provide for carrying forward the vacancies falling in either category, no such carry-forward rule could be implied either in the Recruitment Rules or in the Seniority Rules. This contention need not detain us any longer because such a contention was available to the appellants in the earlier proceedings, namely, Transfer Application No. 822 of 1991 and the same was not put in issue.

That not having been done, it must follow that such a contention is barred by the principles of constructive *res judicata*. Neither the contesting respondents nor the appellants ever raised this contention at any stage of the proceedings in Transfer Petition No. 822 of 1991. It would, therefore, be too late to raise such a contention when the seniority list has been finalized pursuant to the judgment of MAT, Bombay Bench in Transfer Petition No. 822 of 1991."

Interest reipublicae ut sit finis litium:

35. The doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium* which means that in the interest of

the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause (See M. Nagabhushana vs. State of Karnataka and Others, (2011) 3 SCC 408.

36. The contention raised on behalf of the appellant that he should at least be paid the salary and allowances as paid to the Assistant Teachers in the Higher Secondary Section for the time he functioned should also fail for the reason as set out herein above.

Claim for continuity of service:

37. The appellant however cannot be denied continuity of service under the Master Circular dated 29.01.1991 read with the orders of this Court in Smt. Jayasree Deb Roy (Dutta) (supra) [C.A. No. 9424 of 1995] and the order in the appellant's own case i.e. C.A. No. 3557 of 1996 dated 15.02.1996. This is a fresh cause of action, which has arisen in view of his absorption on 02.01.1998, subsequent to the culmination of the earlier round of proceedings.

38. The conduct of the authorities themselves in subjecting the appellant to screening before the Screening Committee, like they did for Smt. Jayasree Deb Roy (Dutta) and Others, also clearly indicates that even they wanted to treat the appellant's case on par with the case of Smt. Jayasree Deb Roy (Dutta) and Others.

It is on that basis that the appellant was found fit for absorption as a primary teacher and he was so absorbed. The only reason given in the order denying continuity for the appellant while granting continuity of the same for the others is that, in the case of the appellant, this Court had not directed any specific order regarding continuity of service.

Rights under the Master Circular:

39. The appellant's right first of all flows from the Master Circular dated 29.01.1991, as has been rightly contended by learned counsel for the appellant. For the sake of convenience, we extract herein below the relevant clauses:-

"4. BENEFITS.

4.1. Substitutes engaged should be paid regular scales of pay and allowances admissible to the post against which they have been appointed irrespective of the nature of duration of the vacancy.

4.2. They be allowed all the rights and privileges as are admissible to temporary railway employees on completion of four months continuous Service.

4.3. Substitute school teacher may, however, be afforded temporary status after they have put in continuous service of three months. Their service to be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

4.4 The conferment of temporary status after completion of four months continuous service in the case of others and three months continuous service in the case of substitute teachers mentioned in paras - 4.2 and 3 above does not entitle them to automatic absorption/ appointment to Railway service unless they are selected in the approved manner for appointment or absorption to regular posts.

4.5 Service of substitutes will count for Pensionary benefits from the date of completion of four months (3 months in the case of teachers) continuous service provided it is followed by absorption in regular Group-C' (Class III)/Group-'D' (Class -IV) Service without break."

"5. Screening of the substitutes for their absorption in regular service:-

5.1 Substitutes, who have acquired temporary status should be screened by screening Committees and not by Selection Boards, Constituted for this purpose before being absorbed in regular Group -'C' (Class-III) and Group-'D' (Class-IV) posts. Such a screening Committee should consist of at least three members, one of whom should belong to the SC/ST Communities and another to minority communities."

5. 11 Gaps which may occur in service of substitutes between two engagements should be ignored for the purpose of temporary status on completion of four months services and in case of teachers, on completion of 3 months service."

"6. Date of appointment.

The date of appointment of a substitute to be recorded in the service book against the column "date of appointment" should be the date on which he /she attains temporary status after continuous service of four months if the same is followed by his/her regular absorption. Otherwise, it should be the date on which he/she is regularly appointed/absorbed. This applies to substitute teachers also who attain the temporary status after a continuous service of three months only."

40. A reading of the above clearly shows that on completion of three months of continuous service as substitute teacher, the incumbent acquires temporary status. It is also clear that substitutes who have acquired temporary status should be screened by the Screening Committee and not by Selection Board. It is also clear that under Clause 5.11, gaps which may occur in service of substitutes

between two engagements should be ignored for the purpose of temporary status on completion of four months service and in case of teachers, on completion of three months service.

Further, it is clear that the date of appointment should be the date on which they attained temporary status in the event they are regularly absorbed. As is clear from the dates mentioned hereinbelow that the appellant having acquired temporary status on 04.03.1990 is entitled to count his service from 04.03.1990 in view of his absorption in the service as a primary teacher on 02.01.1998.

41. The authorities are wrong in stating that in the case of the appellant this Court had not directed any specific order regarding continuity of service. This Court's order of 15.02.1996 has to be read with the order in the case of Smt. Jayasree Deb Roy (Dutta) dated 13.10.1995. Nowhere in the order of this Court in the appellant's appeal had the benefits available to the appellant under the Master Circular been taken away.

In the case of Smt. Jayasree Deb Roy (Dutta), by abundant caution, the Master Circular was referred to and the rights granted therein were reiterated expressly in this Court's order. On the facts of the present case, we are not persuaded to accept the contention of the respondent that the order of this Court in the appellant's case should be so read as having denied him the benefits of Master Circular dated 29.01.1991.

42. The appellant being identically situated with the other absorbees in the order of 02.01.1998 could not have been discriminated and denied the benefit of his service from 04.03.1990 to the date of his absorption.

43. The Tribunal and the High Court have grossly erred in denying the relief by wrongly understanding the orders of this Court and the legal position.

44. We direct that the appellant will be entitled to take into account the past service rendered by him as substitute teacher in different spells, from the date of obtaining temporary status (04.03.1990). The appellant should be extended the same benefits as were extended to others, who were granted continuity by the letter of 28.12.1998.

45. The appellant has superannuated now. The pay of the appellant shall be re-fixed after granting continuity of service with all consequential benefits in accordance with Clause 6 of the Master Circular dated 29.01.1991. All the necessary increments and allowances due on that basis also should be granted.

The retrial benefits also should be consequently reworked. The unpaid arrears amount be paid to the appellant with six percent interest from the respective

dates the various amounts fell due. Let the payment be made within eight weeks from today.

46. Accordingly, the impugned order of the High Court dated 19.07.2011 passed in W.P.C.T. No. 130 of 2009 is set aside. The Appeal is partly allowed in the above terms.

There shall be no order as to costs.

.....**J. (J.K. Maheshwari)**

.....**J. (K.V. Viswanathan)**

New Delhi;

September 20, 2023.

IN THE SUPREME COURT OF INDIA

A. Valliammai
Vs.
K.P. Murali and Ors.

Civil Appeal No. 5342 of 2023

HEADNOTE – Specific Performance Suit - When no time is fixed for performance, limitation runs from period when plaintiff had notice of refusal

JUDGMENT

Sanjiv Khanna, J.

I.A. Nos. 1 of 2017 and 27407 of 2023.

1. I.A. Nos. 1 of 2017 and 27407 of 2023, for permission to take on record additional evidence in the nature of documents, are not opposed. Accordingly, I.A. Nos. 1 of 2017 and 27407 of 2023 are allowed. The documents are taken on record. S. Nos. 2 - 12 in I.A. No. 1 of 2017 are marked as Exhibit Nos. S-1- S-111, and S. Nos. 2 - 4 in I.A. No. 27407 of 2023 are marked as Exhibit Nos. S-12 - S- 142.

C.A. Nos. 5342-5345 of 2023.

1. The impugned judgment by the Division Bench of the Madras High Court at Madurai, dated 20.12.2016, in Appeal Suit (MD) No. 63 of 2007, affirms the judgment and decree of specific performance passed by the court of the Additional District and Sessions Judge, Fast Track Court No.1, Tiruchirapalli, dated 28.12.2006, in O.S. No. 21 of 2004.

2. The appellant in Civil Appeal No. 5342 of 2023 is A. Valliammai, statedly owner of 11 acres of land situated at the west end of survey numbers 55/2B1 and 55/2B2 in 58, Agaram village, Tiruverambur sub-district, Trichi district³, having inherited the same being the second wife of late Ayyamperumal. Civil Appeal Nos. 5343 of 2023, 5344 of 2023 and 5345 of 2023 are preferred by S. Jayaprakash and others, A. Jeyakumar and others, and S. Balasubramanian and others, who are subsequent purchasers having purchased portions of the Suit Property.

3. A. Valliammai had entered into an agreement to sell dated 26.05.1988, Exhibit A-1, with respondent no. 3 - K. Sriram, for the sale of the Suit Property at the rate of Rs. 2,95,000/- per acre. An amount of Rs. 1,00,000/- was paid by K. Sriram to A. Valliammai as an advance. The balance sale consideration of Rs. 31,45,000/- was required to be paid within one year from 26.05.1988, that is, by 26.05.1989. However, vide endorsement dated 26.05.1989, Exhibit A-3, the timeline for payment of the balance sale consideration and execution of the sale deed was extended by 6 months, that is, till 26.11.1989.

4. In order to decide these appeals, before we refer to the facts leading to the filing of the suit for specific performance, we would like to reproduce two clauses of the agreement to sell (Exhibit A-1). The clauses read:

"The under mentioned 4.40 acres in survey number 55/2B 1 which is in my name which is located in the sale property east to west shift to the east end, north to south in favour of Ayyarmalai trust and after shifting it pass through survey numbers 55/2B 1 and 2B 2 and then sell the properties to you so the 11 acres properties which I sell to you shift to the west end into the above two survey numbers and ensure that the lone properties which I sell to you would come within the limit. I assure that there is encumbrance or dispute over the under described property except the original suit number 737/85 in the sub court. If any encumbrance or dispute is found later on, I assure that I will settle those encumbrances and disputes at my responsibility."

5. On 11.07.1991, K. Sriram had issued a legal notice through his advocate, Exhibit A-6, requiring A. Valliammai to accept the balance sale consideration and execute the sale deed within one month. A. Valliammai had agreed to execute the sale deed within one year from the date of the agreement by executing single or multiple deeds in favour of K. Sriram or third persons, as suggested by him. On 14.04.1991, A. Valliammai had demanded Rs. 3,00,000/- as a part of the sale consideration, but on 07.07.1991, she had refused to accept the Rs. 3,00,000/- offered by K. Sriram.

Further, A. Valliammai had expressed her willingness to sell only half of the Suit Property and that too at an enhanced consideration of Rs. 4,17,000/- per acre. A. Valliammai had assured to convert 4.40 acres of land belonging to the Ayyarmalai Trust⁴, to ensure that the property under sale in terms of the agreement to sell (Exhibit A-1) lies adjacent to Trichy to Tanjavur road. At his own expense, K. Sriram had put in great effort to facilitate such conversion.

He had prepared the layout plan, submitted it to Triuverambur Panchayat Union and Madras Town Planning for their approval and had handed over the common land to Tiruverambur Panchayat Union. A. Valliammai had also promised to

settle the partition suit in O.S. No. 787 of 1985, pending in Tiruchi sub court, filed by Rajamani Ammal, first wife of A. Valliammai's husband, late Ayyamperumal Konar, that is, the original owner of the Suit Property.⁵

6. A. Valliammai responded vide reply sent by her advocate dated 09.08.1991, Exhibit A-7. She denied having demanded the payment of Rs. 3,00,000/-. Conversely, she alleged that K. Sriram had failed to perform and abide by the agreement to sell (Exhibit A- 1) within the stipulated deadline due to his inability to complete the contract. The allegations made by K. Sriram were invented to postpone the execution of the sale deed. She had submitted an application for cancellation of the layout plan due to difficulty in obtaining approval.

She denied that K. Sriram had spent any money in putting up the layout. Only if the property belonging to the Trust is allotted on the east, then the property as described could be conveyed. She denied that the partition suit in O.S. no. 787 of 1985 was to be disposed of at her cost. K. Sriram was aware of the pendency. The sale deed was to be executed after disposal of the partition suit. A. Valliammai did not want to take the risk of conveying the property since the said partition suit had not been disposed of.

7. K. Sriram responded vide rejoinder dated 31.08.1991, Exhibit S-13, stating that the allegations made by A. Valliammai were incorrect. A. Valliammai wanted to extricate herself from the agreement. He was ready and willing to perform his obligations under the agreement to sell (Exhibit A-1). The demand to execute the sale deed was not pre-mature. K. Sriram had spent a lot of money to obtain an approval of the layout plan. K. Sriram had instructed his advocate to file a suit for specific performance.

But before that he wanted to give one last opportunity to A. Valliammai to execute the sale deed in 2 weeks, when he would offer the balance sale consideration. Further, the partition suit in O.S. No. 787 of 1985 was dismissed for default on 04.07.1991. Wrong survey demarcation viz. the land belonging to the Trust stood corrected such that the Trust's property was situated on the east and the Suit Property on the west.

8. A. Valliammai responded vide rejoinder reply dated 16.09.1991, Exhibit S-14, in which she denied that a sale deed could be executed and specifically enforced. While accepting that the partition suit in O.S. No. 787 of 1985 had been dismissed for default, it was stated that an application for its restoration was filed. The suit might be restored. A. Valliammai claimed that she was illiterate. Although she was taken to the Revenue Office, she was unaware about the contents of the statement said to have been made by her. In any event, exchange

of property requires a registered document. A partition deed cannot be corrected in the survey proceedings.

9. On 15.07.1991, K. Sriram filed a suit for permanent injunction in O.S. No. 1508 of 1991 to restrain A. Valliammai from dealing with the Suit Property till she executes the sale deeds. A. Valliammai, it was alleged, was negotiating with third parties to sell the Suit Property. K. Sriram would be filing a suit for specific performance in a short time, and was waiting for a reply to his notice.

10. A. Valliammai contested the suit, and in her written statement, she had alleged that K. Sriram was never ready and willing to perform the agreement to sell (Exhibit A-1). He had therefore filed a suit of injunction instead of a suit of specific performance. She had claimed that time was essence of the contract. She had consented for extension of time till 26.11.1989, but K. Sriram had not paid the balance sale consideration till that date. Suit Property had been leased out to one A. Gopalakrishnan, who was in possession and was cultivating the land.

11. An order of temporary injunction was passed in favour of K. Sriram and against A. Valliammai by the trial court. However, on 23.12.1992 the suit was dismissed as not pressed. Liberty to file a fresh suit was neither prayed nor granted.

12. On 23.12.1992 itself, K. Sriram assigned his rights under the agreement to sell (Exhibit A-1) in favour of respondent no.1 - K.P. Murali and respondent no.2 - S.P. Duraisamy, vide assignment agreement dated 23.12.1992, Exhibit A-2.

13. K.P. Murali and S.P. Duraisamy, filed a suit for permanent injunction in O.S. No. 1651 of 1994 with a prayer to restrain A. Valliammai from dealing with the Suit Property. Decree for specific performance of the agreement to sale (Exhibit A-1) was not prayed. It appears that an interim injunction was not granted.

14. On 02.05.1995, A. Valliammai sold 5 acres, a portion of the Suit Property, for a sale consideration of Rs.7,50,000/- to B. Namichand Jain and three others. The purchasers were put in possession and enjoyment of such portions of the Suit Property.

15. On 27.09.1995, during pendency of the suit for permanent injunction in O.S. No. 1651 of 1994, K.P. Murali and S.P. Duraisamy filed a suit for specific performance in O.S. No. 1126 of 1995, subsequently renumbered as O.S. No. 21 of 2004. The present appeal arises from the judgment and decree of the trial court in the said suit, affirmed subsequently by the High Court in the impugned judgment.

16. The suit was defended by A. Valliammai on several grounds, including, inter alia, constructive res judicata, bar under Order II Rule 2 of the Code of Civil Procedure, 1908, bar of limitation, failure to show readiness and willingness to perform the agreement to sell (Exhibit A-1) and invalidity of the assignment agreement (Exhibit A-2).

17. The trial court framed one issue, that is, whether the plaintiffs were entitled to the relief of specific performance. Trial court held that the execution of the agreement to sell (Exhibit A-1) and its extension by six months vide the endorsement (Exhibit A-3) were admitted. A. Valliammai had not led evidence regarding allotment of land to the Trust on the eastward side or her willingness to refund the advance amount.

Further, K. Sriram was not aware of the status of partition suit in O.S. No. 787 of 1985. In terms of Order VIII, Rules 4 and 5 of the Code, A. Valliammai had not denied her intention to complete the agreement to sell (Exhibit A-1). K.P. Murali and S.P. Duraisamy had awaited the conclusion of the partition suit in O.S. No. 787 of 1985. Therefore the limitation period had not commenced till the disposal of the said partition suit on 30.04.1993.

Correspondingly, the plea of res judicata was rejected since the decision to not file the suit of specific performance was considered to be bona-fide. K. Sriram was ready and willing to perform the agreement to sell (Exhibit A-1) since he had taken steps to divide the Suit Property into housing plots. The contention that the assignment agreement (Exhibit A-2) would not confer any rights to K.P. Murali and S.P. Duraisamy was rejected.

18. The High Court in the impugned judgment rejected the pleas of res judicata or bar under Order II, Rule 2 of the Code in view of the pendency of the partition suit in O.S. No. 787 of 1985. However, the allotment of the Trust property eastwards was held to be nonessential to the agreement to sell (Exhibit A-1). The High Court agreed with the trial court, that K. Sriram was ready and willing to purchase the Suit Property and had taken steps to execute the sale deeds. K. Sriram had also reserved his right to file a suit for specific performance during the suit for injunction in O.S. No. 1508 of 1991, which suit was subsequently dismissed as not pressed.

19. We must record at the outset that there is considerable force in the contention raised by the appellants relying upon the principle of constructive res judicata or Order II, Rule 2 of the Code. However, we are not giving an affirmative final opinion on these pleas. The appellants must succeed in this appeal since the suit for specific performance in O.S. No. 21 of 2004 is clearly and without doubt

barred by limitation. To avoid prolixity, the arguments raised by the learned counsels for the parties would be referred to in our discussion and reasoning.

20. Article 54 of Part II of the Schedule to the Limitation Act, 1963⁷ stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.⁸ Section 9 of the Limitation Act, 1963 stipulates that once the limitation period has commenced, it continues to run, irrespective of any subsequent disability or inability to institute a suit or make an application.⁹

21. It is an accepted position that Rs. 1,00,000/- was paid at the time of execution of the agreement to sell (Exhibit A-1), and the balance consideration of Rs. 31,45,000 was required to be paid by 26.05.1989. Time for payment of Rs.31,45,000/- and execution of the sale deed was extended till 26.11.1989 vide the endorsement (Exhibit A-3). If we take the date 26.11.1989 as the date for performance, the suit for specific performance filed on 27.09.1995, is barred by limitation.

However, we agree with the submission raised on behalf of K.P. Murali and S.P. Duraisamy, that the aforesaid time, as fixed vide the agreement to sell and the endorsement (Exhibit A-1 and A-3), was not the essence of the contract and therefore, the first part of Article 54 will not be applicable.¹⁰ Instead, the second part of Article 54 will apply.¹¹

On the interpretation of Article 54, this Court in *Pachanan Dhara and Others v. Monmatha Nath Maity*¹², has held that for determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established.

However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract. Therefore, we have to examine whether K. Sriram or his assignees, K.P. Murali or S.P. Duraisamy, had notice that performance had been refused by A. Valliammai and, if so, from which date.

22. We have elaborately referred to the correspondence exchanged between the parties, namely, notice dated 11.07.1991 (Exhibit A- 6), reply dated 09.08.1991 (Exhibit A-7), rejoinder dated 31.08.1991 (Exhibit S-13) and reply to the rejoinder dated 16.09.1991 (Exhibit S-14). We have also referred to the written statement filed by A. Valliammai.

These are admitted documentary evidence and the contents thereof are not in debate. In our opinion, K. Sriram, in the notice dated 11.07.1991 (Exhibit A-6) and rejoinder notice dated 31.08.1991 (Exhibit S-13), had acknowledged having notice that A. Valliammai had refused to perform her part of the contract. K. Sriram filed a suit for permanent injunction on 15.07.1991 to restrain A. Valliammai from selling the Suit Property to third parties.

In the plaint, there is a specific averment and statement that A. Valliammai was making excuses and going back on the terms previously agreed. A. Valliammai was negotiating with third parties for sale of the Suit Property. She was not abiding by the statement made before the Tiruverumbur Panchayat Union. K. Sriram had averred that he was going to file a suit for specific performance in a short time, and he was awaiting reply from A. Valliammai.

The reply dated 09.08.1991 (Exhibit A-7) and rejoinder dated 16.09.1991 (Exhibit S-14) by A. Valliammai did not change the situation. These are written notices of refusal and not of acceptance of any obligation and affirmation. K. Sriram did not withdraw the suit for permanent injunction on the ground that he was satisfied with the reply and stand of A. Valliammai and hence the cause of action did not survive. K. Sriram continued with the suit and had enjoyed benefit of temporary injunction granted in his favour.

The suit was un-conditionally dismissed as withdrawn on 23.12.1992, the day K. Sriram had transferred/assigned his rights under the agreement to sell (Exhibit A-1) in favour of K.P. Murali and S.P. Duraisamy (Exhibit A-2). K. Sriram, K.P. Murali and S.P. Duraisamy were aware of the refusal and thus the cause of action had arisen forcing them to approach the court with a prayer for injunction against A. Valliammai.

23. It was submitted before us, that in A. Valliammai's deposition as PW-2, in front of the trial court, she had accepted that no notice was served on K. Sriram to pay the balance sale consideration on the date prescribed under the agreement to sell (Exhibit A-1) and that she had remained quiet with the hope that K. Sriram would show and therefore the limitation period under the second part of Article 54 had not commenced. We do not agree. The question to be examined and answered is whether K. Sriram had notice of A. Valliammai's refusal or unwillingness to perform her part of the agreement.

The relevant portion of deposition of A. Valliammai as PW-2 does not refer to her refusal or acceptance, but merely refers to the factual position that she had not issued any notice or at one point of time she had hope. This deposition cannot be read as acceptance and willingness of A. Valliammai. At the risk of repetition, we state that in the reply dated 09.08.1991(Exhibit A-7) and the

rejoinder dated 16.09.1991 (Exhibit S-14), A. Valliammai had contested the assertions or allegations made against her by K. Sriram, and her denial and refusal to abide and comply by the agreement to sell (Exhibit A-1) was affirmed.

24. Once we accept A. Valliammai's refusal and K. Sriram's notice of her refusal, the submission on behalf K.P. Murali and S.P. Duraisamy relying on Section 63 of the Indian Contract Act, 1872, that a promise may extend time for performance of a contract and the submission relying on S. Brahmanand and Ors. v. K.R. Mutugopal¹³, that extension of time need not be in writing and can be proved by oral evidence, including conduct and forbearance on the part of the other party, have to be rejected. Refusal and forbearance are opposites.

25. The High Court in the impugned judgment had rejected the contention that the allotment of the Trust property eastwards had any bearing on filing of the suit for specific performance. We agree with the said finding. In fact, vide rejoinder dated 31.08.1991 (Exhibit S-13), K. Sriram stated that the survey demarcation was already corrected in the survey map such that the Trust property was situated on the east and the A. Valliammai's property on the west.

26. The submission stating that the agreement to sell (Exhibit A-1) was to be specifically performed only after disposal of the partition suit in O.S. No. 787 of 1985 is misconceived and wrong. We have quoted the relevant clause of the agreement to sell (Exhibit A-1). It do not state that the sale deed was to be executed only after disposal of the partition suit. A. Valliammai had only faithfully stated that there was no encumbrance or dispute over the Suit Property except the partition suit.

The disputed Suit Property could still be sold and transferred. K. Sriram was clearly aware of the pending suit while executing the agreement to sell (Exhibit A-1), which was agreed despite the pending litigation. It was submitted on behalf of K.P. Murali and Duraisamy that, A. Valliammai, in her reply dated 09.08.1991 (Exhibit A-7) claimed that it was not possible for her to execute the contract till the disposal of the said partition suit.

The argument is without merit, as this assertion by A. Valliammai shows her refusal to perform the agreement to sell (Exhibit A-1). A decision in the said suit was not a condition precedent to the execution of sale deed under the agreement to sell (Exhibit A-1). Neither had K. Sriram read the said reply as concurrence or acceptance by A. Valliammai to execute the sale deed post the decision in the said partition suit.

On the other hand, as recorded previously, K. Sriram had continued to press the suit for permanent injunction in O.S. No. 1508 of 1991. Another fallacy in the

argument raised on behalf of K.P. Murali and K.P. Duraisamy is that A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) is not being read in its entirety. This is not a proper manner to construe a notice or reply and the contents and purport thereof. K. Sriram, and subsequently, K.P. Murali and K.P. Duraisamy had filed suits for permanent injunction.

27. For the aforesaid reasons, the 3-year limitation period to file a suit for specific performance commenced as early as when the K. Sriram had filed suit for injunction on 15.07.1991. A. Valliammai's reply dated 09.08.1991 (Exhibit A-7) or reply to rejoinder dated 16.09.1991 (Exhibit S-14) were again sufficient written notice to K. Sriram of her refusal and unwillingness to perform the agreement to sell (Exhibit A-1). The limitation period of three years under the second part of Article 54, which is from the date when the party had notice of the refusal by the other side, had expired when the suit for specific performance was filed on 27.09.1995. Suit in O.S. No. 21 of 2004 is barred by limitation.

28. Accordingly, the impugned judgment and decree for specific performance, as affirmed by the Division Bench, is set aside.

29. K. Sriram had paid an advance of Rs. 1,00,000/- to A. Valliammai. This position is accepted. In view of our findings, the suit filed by K.P. Murali and S.P. Duraisamy, being barred by limitation, K.P. Murali and S.P. Duraisamy are not entitled to a decree for refund of Rs.1,00,000/- with interest. During the course of hearing, the parties had tried to negotiate a settlement but it had not actualised. A. Valliammai had agreed to pay Rs. 50,00,000/- (Rupees Fifty Lakhs Only) to K.P. Murali and S.P. Duraisamy.

The reason was that K. Sriram had spent money in obtaining approval of layout plans. A. Valliammai has sold most of the Suit Property except for about 1 acre of the land. K.P. Murali and S.P. Duraisamy have deposited Rs. 31,45,000/- in terms of the decree passed in their favour, which amount has been converted into interest bearing fixed deposit receipt(s). Keeping in mind the aforesaid facts and circumstances, we exercise our power under Article 142 of the Constitution of India, to do substantial justice with the direction to A. Valliammai to pay Rs.50,00,000/- (Rupees Fifty Lakhs Only) to K.P. Murali and S.P. Duraisamy.

The figure keeps in mind the advance of Rs.1,00,000/- paid on 26.05.1988 and the expenses incurred by K. Sriram, and interest etc. A decree of Rs.50,00,000/- is passed in favour of K.P. Murai and S.P. Duraisamy against A. Valliammai in the above terms. It is also directed that in case Rs.50,00,000/- is not paid by A. Valliammai within 6 (six) months, she shall be liable to pay interest @ 8% per annum on Rs. 50,00,000/- from the date of this judgment till the date on which the payment is actually made.

30. In view of the aforesaid discussion, Civil Appeal Nos. 5343, 5344 and 5345 of 2023, preferred by S. Jayaprakash and others, A. Jeyakumar and others, and S. Balasubramanian and others, are allowed and the decree of specific performance passed in favour of K.P. Murali and S.P. Duraisamy is set aside. O.S. No. 21 of 2004, preferred by K.P. Murali and S.P. Duraisamy, decided by Additional District and Sessions Judge, Fast Track Court No. 1, Tiruchirapalli will be treated as dismissed.

Civil Appeal No. 5342 of 2023 preferred by A. Valliammai is allowed to the extent that the decree of specific performance in respect of the suit land is set aside, and is substituted by a decree of Rs. 50,00,000/- payable with effect from the date of this judgment along with an interest @ 8% per annum which A. Valliammai will be liable to pay if she fails to pay Rs. 50,00,000/- within six months from the date of this judgment. O.S. No. 21 of 2004, filed by K.P. Murali and S.P. Duraisamy and decided by the Additional District and Sessions Judge, Fast Track Court No.1, Tiruchirapalli is decreed in the above terms against A. Valliammai.

31. K.P. Murali and S.P. Duraisamy are entitled to withdraw the amounts previously deposited by them, in terms of the decree of the trial court along with the interest accrued thereon.

32. In view of the facts and circumstances of this case, we hold that there will be no order as to costs.

.....**J. (Sanjiv Khanna)**

.....**J. (Bela M. Trivedi)**

New Delhi;

September 12, 2023.

1 Exhibit S-1 - a true copy of the judgment dated 23.12.1992 passed by the district munsif court in O.S. No. 508 of 1991; Exhibit S-2 - a true copy of the lawyer's notice dated 11.07.1994; Exhibit S-3 - a true copy of the rejoinder notice dated 13.07.1994; Exhibit S-4 - a true copy of the judgment dated 12.06.2002 passed by the district munsif court in O.S. No. 1164 of 1994; Exhibit S-5 - a true copy of the deposition of PW-1 - plaintiff - Duraisamy, in O.S. No. 21 of 2004 dated 05.07.2004; Exhibit S-6 - a true copy of the deposition of the DW-1 - first defendant - K. Sriram in O.S. No. 21 of 2004 dated 07.09.2006; Exhibit S-7 - a true copy of the deposition of DW-2 - second defendant - Valliammai, in O.S. No. 21 of 2004 dated 15.09.2006; Exhibit S-8 - a true copy of the deposition of DW-3 - Sivakami in O.S. No. 21 of 2004 dated 26.10.2006;

Exhibit S-9 - a true copy of the deposition of DW-4 - Singaram in O.S. No. 21 of 2004 dated 10.11.2006; Exhibit S-10 - a true copy of the sale deed dated 08.05.1995 along with the power of attorney deed dated 28.11.1994; Exhibit S-11 - a true copy of the notice dated 31.08.1991.

2 Exhibit S-12 - a true copy of the judgement/order dated 03.11.1989 passed in O.S. No. 787 of 85 and docket orders in O.S. No. 787 of 85 along with photocopy of the original; Exhibit S-13 - a true copy of the rejoinder notice sent on behalf of K. Sriram dated 31.08.1991; Exhibit S-14 - a true copy of the rejoinder reply sent on behalf of A. Valliammai dated 16.09.1991.

3 For short, "Suit Property".

4 For short, "Trust".

5 Rajamani Ammal and late Ayyamperumal Konar were childless.

6 For short, "Code".

7 For short, "Article 54".

8 The Schedule

xxx

Description of suit	Period of limitation	Time from which period begins to run
54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

9 9. Continuous running of time: Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.

10 Supra Note 8.

11 Supra Note 8.

12 (2006) 5 SCC 340.

13 (2005) 12 SCC 764.

IN THE SUPREME COURT OF INDIA

A. Krishna Shenoy
Vs.
Ganga Devi G. & Ors,

Petition(s) for Special Leave to Appeal (C) No(s). 8080/2019

Date – 11-09-2023

CORAM : Hon'ble Mr. Justice M.M. Sundresh

Hon'ble Mr. Justice Prashant Kumar Mishra

HEADNOTE – In partition suit, every interested party deemed to be a plaintiff; no bar in passing numerous preliminary decrees

ORDER

1. Heard learned counsel for the parties.
2. This special leave petition has been filed by the appellant, aggrieved over the judgment of the High Court confirming the supplementary preliminary decree granted in favour of his sisters, who have been arrayed as respondents No.1 and 2 before us.
3. A suit for partition was filed, on the first occasion, in O.S. No.205/1994 in which the petitioner was arrayed as a defendant. The preliminary decree passed in the said suit has become final as against the petitioner herein. However, two of his sisters were not arrayed as parties. An attempt made by them subsequently during the final hearing of the proceedings, did not yield any fruit. Thereafter, they filed an independent Suit in O.S. No.47/2014 seeking partition. During the pendency of the said suit, they filed an application seeking yet another preliminary decree in the earlier suit against the petitioner before us. Accordingly, a supplementary preliminary decree was passed, which, in turn, is confirmed under the impugned order. Challenging the same, the present special leave petition is filed.
4. Learned senior counsel appearing for the petitioner submitted that the mandate of Order XLI, Rule 31 of the Code of Civil Procedure (for short, 'CPC') has not been complied with. Having filed a separate suit in the year 2014, the separate application is hit by Section 10 of the CPC.
5. Both the Courts, have not taken into consideration the fact that the impleadment application filed by the contesting respondents was dismissed.

6. Both the Courts have wrongly construed the wills relied upon by the petitioners, in disbelieving the evidence of the witnesses, who attested. In support of his contention, learned counsel has made reliance upon the decisions rendered by this Court in *Malluru Mallappa (Dead) Through Legal Representatives v. Kuruvathappa and Others*, (2020) 4 SCC 313 and *Somakka (Dead) by Legal Representatives v. K.P. Basavaraj (Dead) by Legal Representatives*, (2022) 8 SCC 261.

7. Upon perusal of the impugned order and the preliminary decree passed by the Trial Court, we find no error warranting interference. Order XLI, Rule 31 of the CPC has been complied with under the impugned order, inasmuch as adequate reasoning has been rendered. Suffice it is to state that the High Court has considered the contentions on merit and, therefore, dealt with the issues involved.

8. Section 10 of the CPC has got no application in the case on hand. Admittedly, we are dealing with a suit for partition, in which every interested party is deemed to be a plaintiff. Law does not bar passing of numerous preliminary decrees. The fact that the applicants are the sisters of the petitioner is not in dispute.

9. In such view of the matter, they ought to have been arrayed as defendants in the main suit itself. The dismissal of the application during the final hearing proceeding has got no bearing on the application filed seeking yet another preliminary decree. Both the Courts had rightly disbelieved the unregistered wills executed in favour of the petitioner ignoring the two daughters.

10. In such view of the matter, we do not find any error warranting interference. The special leave petition is, accordingly, dismissed.

11. Pending application(s), if any, shall stand disposed of.

C. Legal Article

1. Legal Article

Mediation Bill, 2023

Among the Bills passed in the recent session of the Parliament is the Mediation Bill, 2023. This Bill has the potential to reframe how we understand access to justice in India. After more than twenty years of policies enabling and mandating mediation and conciliation, these expressions are no longer unfamiliar to us. These are processes where persons in conflict take the assistance of another person who works with them in building dialogue and understanding, that paves the way to cooperating to resolve their problems. The process supports them in moving away from anger, mistrust and hostility to an acceptance that they own their conflict, and together they can identify the problems surrounding the conflict and resolve them. The Mediation Bill, 2023 ('the Bill') provides a comprehensive policy framework to encourage the use of mediation. If disputes are settled through mediation before, during, and even after decrees in courts, the objective of accessing justice on terms determined to be fair by the parties is well served.

PART -1 - Framework of the Mediation Bill

Till date, India has a patchwork of policies on mediation. These include policies related to court-annexed mediation, the compulsory use of mediation in certain commercial disputes before filing a case in court, mediation of cases in courts through the Lok Adalats, mediation of disputes relating to recovery of payments to suppliers by micro and small industries, mediation of consumer disputes, etc. It is in this regulatory milieu that the Bill has been proposed.

A law dedicated to mediation was a felt need, with several objectives in mind. These included standard setting for all the mediation policies that existed - clear articulation of the rights of disputing parties who used mediation, the credentialling of mediators that would inform and enable the mediation users to choose a mediator and rules for the enforcement of the agreement resulting from the mediation. Importantly, this would allow mediation to emerge as a credible, policy backed process for resolving disputes. India is a signatory to the United Nations Convention on International Settlement Agreements Resulting from Mediation ("the Singapore Convention") since 2019. It was expected that the new law on mediation would implement the Singapore Convention enabling the enforcement of cross border mediated settlement agreements in India.

The Bill, when introduced in the Rajya Sabha in 2021, was referred to the Standing Committee on Personnel, Public Grievances, Law and Justice, Rajya Sabha Secretariat, Parliament of India for review. The Standing Committee held discussions with lawyers and mediators across India and submitted its report, suggesting revisions to various aspects in the Bill. Some of these recommendations have been incorporated, while others have been excluded. An important recommendation of the Standing Committee was to remove the proposal in the 2021 draft for mandatory mediation across civil and commercial disputes under this law. This has been accepted.

The Bill addresses mediation in civil and commercial disputes, and the promotion of institutional mediation in India. It enables steps to be taken for building capacities - mediators, mediation service provider organizations, and for standards setting in mediation services. In the context of mediation in India being led by court-annexed mediation services, the promotion of institutional mediation provides an important thrust to the growth of mediation services in addition to the courts. This means the availability of a choice of visible, reliable and credible mediation services to help resolve India's significant number of current and future disputes. Access to mediation is thus built through capacities for institutional mediation outside of the courts.

The oversight of institutional mediation will be undertaken by a Mediation Council appointed by the government, which is tasked with making regulations, disciplinary oversight of registered mediators, mediation service providers and mediation training institutions, standards setting, and mediation advocacy.

The Bill secures the rights of persons in mediation, through provisions that secure confidentiality in mediation, privileging mediation communication, the training and registration of mediators, volition in mediation, code of ethics for mediators, and the right to challenge the settlement agreement on limited grounds. When agreements setting the terms for resolution of disputes are made following mediation, the proposed law strengthens implementation of such agreements. Now settlement agreements from mediation can be enforced like a decree of court.

The Bill does not impinge on various laws that govern mediation in different sectors, or in court-annexed mediation. Mediations will continue under those laws. The Arbitration and Conciliation Act, 1996, as its name suggests, provides a framework of rules under which disputes can be resolved through conciliation. This law, modelled on the UNCITRAL Conciliation Rules, 1980, allows for all disputes arising from legal relationships to be resolved through conciliation. This law was felt to be over-prescriptive and rigid as to the process to be

followed, and deficient in the way it addressed the enforceability of settlement agreements made after conciliation. The Bill repeals this law.

Importantly, the Bill in 2023, in a shift from its earlier version, states that mediation of government disputes will be governed by this law. This is significant in two respects – in its affirmation that mediation will be utilized in resolving government disputes, and that this will be under the framework of this law. The significance of positioning this at the forefront (s.2) signals credibility to the mediation process. The fact that these are disputes in which the public are interested is acknowledged in provisions for the framing of schemes and guidelines for government disputes, and for oversight mechanisms that will evaluate the proposed settlement terms before these are signed on (s.48, s.49). The use of mediation is for commercial disputes initially, with discretion being reserved for the use of mediation in other categories of government disputes.

There is a plurality in mediations in India. A member of the family, a well-regarded professional, a friend, customary leaders, industry leaders, etc., are sought to provide mediation services without the nomenclature of mediation. These manifold mediations support dispute resolution, and it is only disputes that have not been resolvable through support systems such as these that may manifest in formal dispute processing in courts. The Bill allows such mediations to continue. Mediation services provided by persons who may not be trained or credentialed under the proposed law are not delegitimized, and this is important. This then, is the framework of the law.

The Bill however, has some disquieting and problematic features. The first relates to the composition of the Mediation Council, proposed as a body to manage mediation and professional mediators, but run by the Government. All the members of the Council are government appointees. Of the seven members of the Council, the majority are persons who do not have a background in mediation and are persons who find themselves in the Council because of their office in government, or in an industrial association. The government also reserves powers to issue directions to the Council ‘on questions of policy’ from time to time (s.47).

Professional bodies world over, self-regulate their affairs, including standard setting and advocacy. The reasons for this are clear. The professionals are best placed to understand competencies, the minimum standards required, the contexts of mediation, and be nimble and respond to the needs and issues concerning the practice of mediation. Self-regulation is democratic. The regulation of mediators through a government run council is a departure from this accepted norm and diminishes the professional in mediation.

Related to this is the extent of control over the mediation process. The proposed law brings into the process of mediation, rules on the seat and venue of mediations, mandating the recording of mediated settlement agreements in writing, registration of settlement agreements, maintenance of a repository of settlement agreements, and a general power of the Council to call for records of the mediation service providers. These encumber the autonomy and flexibility that persons may want to employ in the process. For instance, persons who settle their conflicts through mediation may choose not to set the agreement in writing. The policy is unclear on the interplay between the power of the Council to call for records of service providers, and the rights of mediation users to confidentiality.

Similarly, community mediation now becomes a controlled process (s.43, s.44). Panels of mediators for community mediation will be set up by the District Magistrate or Legal Services Authorities in their jurisdictional areas. If a dispute arises amongst persons in these localities, the mediation will perforce be conducted by these panel mediators if any of the parties to the dispute apply to them. The qualifications for selection to the panel are ‘persons of standing’, persons who have contributed to the society, etc. These qualifications are vague, and raises concerns that this would tend to reflect existing power structures in society, that could impinge on the autonomy of the parties in mediation.

The next issue is the enforceability of agreements to mediate. The choice of mediation to resolve disputes can be made when the commercial or contractual agreements are made. Dispute resolution clauses provide for resolving the dispute first through mediation, followed by adversarial resolution processes if there is no settlement. Courts in England, after an initial reluctance to enforce such mediation clauses on a principle that this would amount to enforcing an agreement to agree, have begun enforcing them. Courts recognize that agreements to mediate, are not simply an agreement to agree, but a structured process where discernable efforts are made by parties to give effect to such commitments to resolve through mediation. Courts in Singapore have specifically enforced agreements to mediate and have expounded on how mediation exposes the false binaries claimed between self-interest and cooperation in a negotiation. The Bill reverses these positive developments. The Bill acknowledges that parties may agree upfront to mediate when conflicts arise but subjects them to a fresh requirement of mutual consent to mediate when the time comes for their application. Hence such agreements will not be enforceable unless both parties agree, in which event no recourse to a judicial authority will be necessary!

The Bill sets out grounds on which a settlement agreement can be challenged by a party (s.19, s.28). These are fraud, impersonation or corruption. While these

factors are important, the proposed law is unclear on what impersonation or corruption means. Whose corruption, and what manner of corruption permits a challenge to the settlement agreement? Several other important factors are not contemplated in this context. Civil and commercial agreements, it is expected, could involve the interests of a child. Should there not be stringent oversight in such situations? Similarly, will not conditions of duress and coercion impact the legitimacy of a settlement agreement? Settlement agreements resulting from mediations straddle two dimensions – an agreement and a resolution. Assessing the bases for their legitimacy and consequently, the grounds for their challenge is thus a painstaking but important task, which remains to be undertaken. Providing comprehensive grounds of oversight, will give legitimacy to the process, and will eliminate ad hoc judicial expansion of grounds where the policy is found wanting. The period within which a settlement agreement can be challenged is 90 days plus 90 days, which is inadequate. Fraud may be discovered well after this period, but the party will not be able to challenge the settlement.

The Bill lists categories of disputes that cannot be mediated (s.6, Schedule I). The issue whether private dispute resolution processes can be applied for all dispute categories has been addressed in judgments of the Supreme Court (**Booz Allen & Hamilton Inc. v SBI Home Finance Ltd. - 2011** and **Vidya Drolia v Durga Trading Corporation - 2021**). The courts in India have applied principles such as whether the dispute is one which is a dispute in rem - as distinct from a dispute concerning inter-personal rights, whether the resolution will have an ergo omnes effect or impact third party rights (such as the validity of a claim to an intellectual property), where a centralized public dispute resolution process is mandated by law, the issue to be resolved relates to sovereign and public interest functions of the State, or whether the vulnerabilities of certain persons warrant public and rights based resolution, non-compoundable criminal offences, etc., as bases to determine if a dispute can be resolved through a private process.

While discussed in the context of arbitration, these principles considered why public dispute resolution through courts and tribunals must decide certain disputes, rather than private dispute processes, and are useful in mediation as well. It is submitted that this latter approach is a better way to analyse and exclude disputes from mediation rather than excluding dispute categories by fiat. For instance, a dispute may have criminal as well as civil remedies that a party can seek. The prohibition of disputes involving criminal offences for mediation, results in proscribing mediation in the civil remediation of the dispute. The absolute terms of prohibition of dispute categories in the Bill, such proceedings before the SEBI, is also at variance with efforts by the government to introduce mediation in dispute categories, such as the SEBI

(Alternative Dispute Regulation Mechanism) (Amendment) Regulations, 2023, which has been substantially re-designed in July this year to encourage use of mediation in investor disputes with listed companies and certain intermediaries.

Finally, there are many drafting inconsistencies that impact the policy. For instance, the Bill defines as a “party”, a person who agrees to and engages in the mediation to resolve their dispute. This is an error. Defining party as the persons in mediation, then overlooks the fact that necessary parties to the dispute who ought to, may not have participated. Such a person will also not be able to challenge the mediation settlement, despite there being available the ground of impersonation, because they are not a party to the mediation. Another example is the definition of place of business. Instead of limiting this to the place of business that is connected with the dispute, the definition accommodates multiple places of business that a party may operate from, resulting in multiple courts claiming jurisdiction.

PART II - Singapore Convention

The Singapore Convention (<https://www.singaporeconvention.org/convention>), was passed by the General Assembly of the United Nations in December 2018. The Convention provides a framework for implementing and enforcing international mediated settlement agreements. The Convention is similar in purpose to the New York Convention for foreign arbitration awards. Through the adoption of the Convention international settlement agreements can be enforced through courts in India. Where more countries ratify and make the Singapore Convention a part of their law, the enforcement of mediated settlement agreements concerning businesses in those countries becomes easier. The knowledge that mediated settlements will be enforced in case of breach spurs confidence in and the adoption of mediation in resolving international disputes.

The Convention applies to settlement agreements resulting from mediations that are international – i.e., settlement agreements relating to businesses in different countries, and commercial – i.e., where the purpose of the relationship for all parties is business or commercial. The Convention contemplates enforcement of the mediated settlement agreement in two scenarios. The first is to use the machinery of the courts to get the counter parties to perform their obligations under the mediated settlement agreement. The second is to apply the mediated settlement agreement for the purposes of a defense in a proceeding in another country.

The Singapore Convention lists a comprehensive set of grounds on which the settlement agreement will be evaluated. These relate to considerations on

capacity of parties, illegality in the agreement, public policy considerations, mediator misconduct that is so serious as to vitiate the settlement agreement, uncertainty in the agreement, etc. If, on evaluation by the courts, the agreement qualifies on these grounds, the courts will enforce the agreement against the counter parties situated in their country. The enforcement is done regardless of the place where the mediation was undertaken.

The Singapore Convention is an important measure for encouraging mediation. Persons involved in in cross-border conflicts will readily use mediation, with the assurance that the agreement that they make will be enforced by the courts of the home country of the counter party. India's recognition of mediation and the importance of the Singapore Convention can be appreciated from the fact that it was one of the earliest countries to sign the Convention in August 2019.

The Mediation Bill, 2023, does not include the Singapore Convention.

The explanation for the non-adoption of the Singapore Convention in the Bill can be found in the submissions made by the government in the Standing Committee meetings. The government informed the Committee that the Convention had only just come into force and that India would prefer to wait for greater acceptance, especially by other major economies, and observe the course its implementation takes.

Notwithstanding this position, the Bill makes provision for international commercial mediations, mediated settlement agreements and their enforcement in India.

Why and how does the Bill address international mediation? The answer to the first question is unclear, especially when one considers the answer to the second. The Bill defines international mediations (s.3(g)). These are mediations where at least one party to the mediation is a person outside India. For such mediations to be considered under the Bill the mediations must relate to: (i) a commercial dispute, (ii) must be undertaken in India (see s.2) and (iii) must be undertaken under this law. This and other provisions in the Bill relating to international mediation inexplicably work at cross-purposes with the policy under the Singapore Convention.

As can immediately be seen, international mediations that take place outside India are excluded, and will not have the benefits (limited though they are) of enforcement under the Mediation Bill.

The Bill has other misalignments with the Singapore Convention as concerns international mediations. These are discussed below.

With the coming into force of the Bill, India will have two policies on commercial mediations. The first one is under the Commercial Courts Act, 2015. This law provides for the demarcation of commercial courts and commercial divisions for processing cases relating to commercial disputes. This law also defines commercial disputes, but differently from the Singapore Convention, in that it does not require that all parties to the dispute have a commercial purpose. The law mandates pre-institution mediation. Settlements arrived at through mediation are enforceable as if they were a decree of court.

The second policy for commercial mediation is that set out in the Bill. The Bill adopts the definition of 'commercial dispute' in the Commercial Courts Act (s.3(a)). However, the Bill excludes from its purview commercial mediations covered by the Commercial Courts Act. Presently, the Commercial Courts Act covers all commercial disputes of a value of Rs.3 lakhs and above. It is only the remainder that fall to be considered under the Bill. Mediation of disputes that may be regarded as commercial but fall under the jurisdiction of special tribunals will be governed by the Mediation Bill (s.5(2)).

Consequently, we now have two policies in relation to international commercial mediations. These are both based on a wider conception of 'commercial' that does not align with the Singapore Convention.

The inconsistencies continue. The Bill and the Commercial Courts Act make settlement agreements resulting from mediation enforceable as if they were a decree of court. Under both policies, the commercial mediations must take place in India (please see section 12A(2) of the Commercial Courts Act as it is proposed to be amended by the Bill), to get the benefit of enforcement in India. This has two consequences. In the case of an international mediation under either of these policies, enforcement of the settlement agreement will be like a decree of court. Countries that ratify and implement the Singapore Convention, will not consider such settlements for enforcement because the Singapore Convention excludes from its purview settlement agreements that have the status of a decree. As to countries that have not implemented the Singapore Convention, the status of decree given to the settlement agreement disrupts enforcement under their domestic laws on mediation that might afford enforceability to mediated settlement agreements.

The advantages in the New York Convention and the Singapore Convention are the framing of policies that provide a framework of oversight over outcomes in private dispute resolution processes and enforcement of foreign judgements in other countries. More importantly these conventions overcome the difficulties facing enforcement of foreign judgements, by providing a simple framework for

enforcement. With the unqualified treatment of mediated settlement agreements as decrees of courts, the very purpose and advantage of the Singapore Convention gets undermined. The Singapore Convention grants a sui generis status to international settlement agreements which can be enforced in any country that ratifies the Convention.

In the proposed law, there will be a category of international commercial mediations and settlement agreements left rudderless because they have taken place outside India. It is also unclear how this will impact online mediation.

While awaiting ratification, the Bill could and ought to have adopted the concepts and principles in the Singapore Convention that relate to grounds of challenge, the manner of conferring an enforceable status to the settlement agreement and the definition of international commercial mediation under its scope. The policy dissonances will surely affect adoption of mediation by foreign companies with business interests in India, who are unsure of their enforcement of mediated settlements in the country.

Businesses arrange their disputing processes and adopt mediation on the basis of policies that secure the validity and enforcement of mediation agreements. The uncertainty surrounding the implementation of the policies in the Bill and the Commercial Courts Act that conflict with the Singapore Convention is bound to impact utilization of mediation in international disputes. Should the government choose to ratify the Singapore Convention, it will first need to dismantle two policies – the law under the proposed Bill and the Commercial Courts Act, 2015, (a law which mandates mediation of commercial disputes both international and domestic – as defined under that law – before filing of a case in court).

India's signing of the Convention has been touted as an important source of encouragement to the Singapore Convention, and her leadership in the ratification and implementation of the Convention is a matter of great anticipation in the business and mediation world. As we discuss the Mediation Bill in India, the Convention has notched up 56 signatories (including India), and 11 ratifications. The Convention came into force in September 2020. Singapore has ratified and made a law for the implementation of the Convention in 2020. The United Kingdom has consulted internally on the benefits and utility of the Singapore Convention and has decided to ratify it. In not ratifying and legislating on the Singapore Convention, India has lost an opportunity in providing an assurance that international mediations will be encouraged, and that mediated settlements will be enforced here. This is a chance to bolster efforts for ease in resolution of disputes and enforcement of international contracts in our country.

2. Study Material-G.K.

18th G20 Summit and India

The G20 Summit is an intergovernmental forum for international economic cooperation that shapes and strengthens global economic architecture and related governance. Although the initial focus of the Group of 20 was primarily on global macroeconomic issues and financial stability, which were the reasons for its genesis, its agenda has been broadened to cover concerns like trade, climate change, sustainable development, health, agriculture, energy, environment, anti-corruption, and so on.

The current G20 Presidency offers a unique opportunity for India to spearhead a collective approach to address various complex economic challenges of the world as well as putting the aspirations of the developing world to the forefront of the platform.

Historical Background of G20 Summit

The Group owes its origin to the **Financial Crisis in 1997-98** of the **Asian Tigers** (Countries of East and Southeast Asia), which caused its establishment in **1999**. It worked first as a forum for the Central Bank Governors and Finance Ministers of the major industrialised and developing economies to discuss global economic and financial stability.

Elevation to Leader's Level: After the **2008 global financial crisis**, it was upgraded to the level of **Heads of State or Government** when it became clear that crisis coordination would be possible only at the highest political level.

In 2009, it was declared as the “premier forum for international economic cooperation”.

The G20 Leaders have met on a regular basis since then, and the G20 has emerged as the leading platform for global economic cooperation.

G20 Countries List

G20 comprises **19 countries**, namely Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, the Republic of Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkiye, the United Kingdom, the United States and the **European Union**.

- These members account for around 85% of the world GDP, 75% of the total international trade, and two-thirds of the global population.
- In addition to these member countries, the G20 each year **invites guest countries** and **international organisations** such as the United Nations, World Bank, IMF, OECD, ASEAN, etc., to participate in its meetings.

Structure and Functioning of G20

The G20 operates on the basis of annual meetings of Finance Ministers and Central Bank Governors, with a leaders' summit held once a year. The G20 consists of two parallel tracks called the **Finance Track** and the **Sherpa Track**. These two tracks play an active role in shaping ideas and priorities for the host presidency while also guiding the intergovernmental negotiations carried out throughout the presidency. They prepare and follow up on the issues and commitments adopted at the Summits.

Structure of G20 Summit	
Sherpa Track	<ul style="list-style-type: none"> - The Sherpas of member countries are the personal emissaries of the Leaders. - They concentrate on socio-economic issues such as agriculture, anti-corruption, climate, digital economy, education, employment, energy, environment, health, tourism, trade and investment. - They oversee all the negotiations over the year, discuss the agenda for the Summit and coordinate the substantive work of G20.
Finance Track	<ul style="list-style-type: none"> - It is headed by the Finance Ministers and Central Bank Governors, who generally meet four times a year, with two meetings being held on the sidelines of World Bank /International Monetary Fund meetings. - Focus areas: Fiscal and Monetary policy issues such as global economy, infrastructure, financial regulation, financial inclusion, international financial architecture, and international taxation.

- **Troika:** The G20 does not have a charter or a secretariat. The Presidency is supported by the Troika, which includes the previous, current, and incoming presidencies. The G20 Presidency hosts the Summit and directs the agenda for a calendar year.
- **A non-binding forum:** Its decisions are not legally binding, and member countries are not required to implement them.

- **Working with international organisations:** The G20 members also work closely with international organisations such as the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO).

Significance of G20 Summit 2023

- **Wider areas of cooperation:** The agenda of the G20 has been expanding from a broad macroeconomic policy to include more areas of cooperation.
 - The G20 summit in Hangzhou (China), 2016, saw the convergence of the US and China on the Paris Agreement.
 - The G20 summit in Argentina, 2018 focused on fair and sustainable development.
 - G20 summit in Germany, 2021 focused on the issues regarding money laundering, international tax havens, and corruption.
 - G20 summit in Bali (Indonesia), 2022 focused on financial stability, humanitarian crisis, poverty, and aid to least developed nations, among other things.
 - **Food security:** The leaders promised to work together to address food security issues and praised the Black Sea grains initiative.
 - **Promoting gender equality:** Recognize the importance of gender equality and commit to promoting it by increasing women's participation in the workforce, reducing the gender pay gap, and improving access to **education** and **healthcare**.
- **Global balance of power:** The G20 promotes a more equitable distribution of power among developed and developing countries than the earlier formed blocs such as G-7 and P-5 (UNSC), which helps to maintain a balance of power at the global level.
- **Bringing adversaries on a common platform:** The importance of the G20 lies in its ability to bring together countries with different ideologies, political systems, and economic interests onto a common platform to discuss and address **global economic issues**.
- **Addressing climate change:** The G20 has recognised the threat of climate change and has taken some initiatives to address it.
 - The commitments adopted by the G20 members in the domain of **climate change revolve around the following issues:** energy efficiency and renewables; adoption of advanced and clean technologies; resilient infrastructure; tackling environmental challenges like biodiversity loss; adoption of the Circular Carbon Economy etc.
- **Networking and collaboration:** The G20 provides an opportunity for leaders from different countries to meet and exchange ideas, strengthening relationships and promoting collaboration on **economic issues**.

- **Global economic cooperation:** The G20 has played a critical role in responding to economic crises such as the 2008 global financial crisis, the **Eurozone debt crisis**, and the COVID-19 pandemic.

Issues and Limitations of G20

While the G20 has played an important role in shaping global economic policies, there are several challenges and limitations to its effectiveness:

- **Difficulty in reaching consensus:** Countries with a wide range of economic and political systems can make it difficult for them to reach a consensus on important issues.
 - For example, during the **2008 global financial crisis**, the G20 struggled to come up with a coordinated response.
 - There has been friction within the group sometimes regarding the issue of climate change.
 - Further, geopolitical tensions such as the Russia-Ukraine crisis also become the bone of contention in reaching the consensus, as observed in the Bali G20 summit as well as during the current **India's G20 presidency**.
- **No Permanent Secretariat:** The G20 does not have a **permanent secretariat**, due to which monitoring becomes cumbersome and inefficient as discussions expand.
- **Non-binding decisions:** Member countries are not legally bound to implement the decisions made at G20 meetings.
 - For example, the G20 countries had agreed to a set of guidelines for preventing the **financing of terrorism**, but there is no mechanism to enforce compliance with these guidelines.
- **Limited membership:** The G20 only includes 19 countries and the European Union, which means that other important economies are not included. Expanding the membership could help to ensure that the group is more representative of the **global economy**.

India's G20 Presidency 2023

India is hosting the **G20 Leaders' Summit 2023** for the first time in history, with 43 Heads of Delegation attending the final New Delhi Summit in **September 2023**, the most ever in the G20. Amitabh Kant is the G20 Sherpa of India. India is on a mission to create a shared global future with a rules-based order, peace, and just growth for all through its **Amrit Kaal initiative**.

- **Theme of India's G20 presidency:** "*Vasudhaiva Kutumbakam*" or "*One Earth - One Family - One Future*".
- **Troika:** During the presidency, the Troika would consist of Indonesia, India and Brazil.

- **Invitees:** Other than the members and multilateral institutions, **nine countries** have been invited - Bangladesh, Netherlands, Oman, Singapore, Nigeria, Spain and the United Arab Emirates, Egypt, and Mauritius.
- **African representation:** To make G20 more inclusive, India has **proposed** to include the **African Union** as a full-time member.
- **Challenge for India presidency:** In its various G20 meetings, India as a host, has been unable to draft a final joint statement acceptable to all members due to Russia-Ukraine tensions.

India's G20 Priorities

- **Green Development, Climate Finance and Lifestyle for Environment (LiFE):** India's emphasis on combating climate change, with a focus on climate technology and finance, as well as ensuring equitable energy transitions for developing nations.
- **Accelerated, Inclusive & Resilient Growth:** Focus on initiatives that could result in structural change, such as: assisting small and medium-sized businesses in international trade, advancing labour rights and welfare, addressing the global skills gap, and constructing inclusive agricultural value chains and food systems.
- **Accelerating progress on SDGs:** Recommitment to achieving the goals outlined in the 2030 Agenda for Sustainable Development, with an emphasis on addressing the COVID-19 pandemic's effects.
- **Technological Transformation and Digital Public Infrastructure:** Encouragement of a human-centric view of technology and increased knowledge exchange in areas like financial inclusion, digital public infrastructure, and tech-enabled development in industries like agriculture and education.
- **Multilateral Institutions for the 21st century:** Efforts to reform multilateralism and build a more accountable, inclusive, and representative global order capable of addressing the challenges of the twenty-first century.
- **Women-led Development:** In order to promote socio-economic development and the achievement of the **SDGs**, emphasis should be placed on inclusive growth and development, with a focus on women's empowerment and representation.

Significance of India's G20 Presidency

- **India's growing economic influence:** As the fastest-growing large economy, India's role in the G20 is critical, and its presidency will help it further strengthen its economic ties with other G20 members.
- **India's leadership on climate change:** India has been a strong advocate for climate action. As the world grapples with the challenge of climate change, India's presidency can help set the tone for **global cooperation** on this issue.

- **India's focus on inclusive growth:** By prioritising inclusive growth, India's presidency will focus on issues such as infrastructure development, job creation, and **women's empowerment**.
- **India's strategic importance:** The presidency of the G20 will provide a platform for India to engage with other major powers, including the **United States, China, and Russia**, on issues of global importance.
- **Becoming the voice of Global South:** By holding the meeting of the Global South countries along with G20 meetings, India has become the voice of the erstwhile sidelined Global South.
- **India's role in quality healthcare:** India has played a leading role in ensuring that developing and low-income countries have access to vaccines, financing, and other resources they need to recover from the pandemic. Thus, India can ensure universal, quality, and affordable health services.

3. Study Material-Language

Synonyms

Synonyms are words or phrases which have the same or nearly the same meaning as other words or phrases in the same language:

Amazing	incredible, unbelievable, improbable, fabulous, wonderful, fantastic, astonishing, astounding, extraordinary
Anger	enrage, infuriate, arouse, nettle, exasperate, inflame, madden
Angry	mad, furious, enraged, excited, wrathful, indignant, exasperated, aroused, inflamed
Answer	reply, respond, retort, acknowledge
Ask	question, inquire of, seek information from, put a question to, demand, request, expect, inquire, query, interrogate, examine, quiz
Awful	dreadful, terrible, abominable, bad, poor, unpleasant
Bad	evil, immoral, wicked, corrupt, sinful, depraved, rotten, contaminated, spoiled, tainted, harmful, injurious, unfavorable, defective, inferior, imperfect, substandard, faulty, improper, inappropriate, unsuitable, disagreeable, unpleasant, cross, nasty, unfriendly, irascible, horrible, atrocious, outrageous, scandalous, infamous, wrong, noxious, sinister, putrid, snide, deplorable, dismal, gross, heinous, nefarious, base, obnoxious, detestable, despicable, contemptible, foul, rank, ghastly, execrable
Beautiful	pretty, lovely, handsome, attractive, gorgeous, dazzling, splendid, magnificent, comely, fair, ravishing, graceful, elegant, fine, exquisite, aesthetic, pleasing, shapely, delicate, stunning, glorious, heavenly, resplendent, radiant, glowing, blooming, sparkling
Begin	start, open, launch, initiate, commence, inaugurate, originate
Big	enormous, huge, immense, gigantic, vast, colossal, gargantuan, large, sizable, grand, great, tall, substantial, mammoth, astronomical, ample, broad, expansive, spacious, stout, tremendous, titanic, mountainous
Brave	courageous, fearless, dauntless, intrepid, plucky, daring, heroic, valorous, audacious, bold, gallant, valiant, doughty, mettlesome
Break	fracture, rupture, shatter, smash, wreck, crash, demolish, atomize
Bright	shining, shiny, gleaming, brilliant, sparkling, shimmering, radiant, vivid, colorful, lustrous, luminous, incandescent, intelligent, knowing, quick-witted, smart, intellectual
Calm	quiet, peaceful, still, tranquil, mild, serene, smooth, composed,

	collected, unruffled, level-headed, unexcited, detached, aloof
Come	approach, advance, near, arrive, reach
Cool	chilly, cold, frosty, wintry, icy, frigid
Crooked—	bent, twisted, curved, hooked, zigzag
Cry	shout, yell, wowl, scream, roar, bellow, weep, wail, sob, bawl
Cut	gash, slash, prick, nick, sever, slice, carve, cleave, slit, chop, crop, lop, reduce
Dangerous	perilous, hazardous, risky, uncertain, unsafe
Dark	shadowy, unlit, murky, gloomy, dim, dusky, shaded, sunless, black, dismal, sad
Decide	determine, settle, choose, resolve
Definite	certain, sure, positive, determined, clear, distinct, obvious
Delicious	savory, delectable, appetizing, luscious, scrumptious, palatable, delightful, enjoyable, toothsome, exquisite
Describe	portray, characterize, picture, narrate, relate, recount, represent, report, record
Destroy	ruin, demolish, raze, waste, kill, slay, end, extinguish
Difference	disagreement, inequity, contrast, dissimilarity, incompatibility
Do	execute, enact, carry out, finish, conclude, effect, accomplish, achieve, attain
Dull	boring, tiring, tiresome, uninteresting, slow, dumb, stupid, unimaginative, lifeless, dead, insensible, tedious, wearisome, listless, expressionless, plain, monotonous, humdrum, dreary
Eager	keen, fervent, enthusiastic, involved, interested, alive to
End	stop, finish, terminate, conclude, close, halt, cessation, discontinuance
Enjoy	appreciate, delight in, be pleased, indulge in, luxuriate in, bask in, relish, devour, savor, like
Explain	elaborate, clarify, define, interpret, justify, account for
Fair	just, impartial, unbiased, objective, unprejudiced, honest
Fall	drop, descend, plunge, topple, tumble
False	fake, fraudulent, counterfeit, spurious, untrue, unfounded, erroneous, deceptive, groundless, fallacious
Famous	well-known, renowned, celebrated, famed, eminent, illustrious, distinguished, noted, notorious
Fast	quick, rapid, speedy, fleet, hasty, snappy, mercurial, swiftly, rapidly, quickly, snappily, speedily, lickety-split, posthaste, hastily, expeditiously, like a flash
Fat	stout, corpulent, fleshy, beefy, paunchy, plump, full, rotund, tubby, pudgy, chubby, chunky, burly, bulky, elephantine
Fear	fright, dread, terror, alarm, dismay, anxiety, scare, awe, horror,

	panic, apprehension
Fly	soar, hover, flit, wing, flee, waft, glide, coast, skim, sail, cruise
Funny	humorous, amusing, droll, comic, comical, laughable, silly
Get	acquire, obtain, secure, procure, gain, fetch, find, score, accumulate, win, earn, rep, catch, net, bag, derive, collect, gather, glean, pick up, accept, come by, regain, salvage
Go	recede, depart, fade, disappear, move, travel, proceed
Good	excellent, fine, superior, wonderful, marvelous, qualified, suited, suitable, apt, proper, capable, generous, kindly, friendly, gracious, obliging, pleasant, agreeable, pleasurable, satisfactory, well-behaved, obedient, honorable, reliable, trustworthy, safe, favorable, profitable, advantageous, righteous, expedient, helpful, valid, genuine, ample, salubrious, estimable, beneficial, splendid, great, noble, worthy, first-rate, top-notch, grand, sterling, superb, respectable, edifying
Great	noteworthy, worthy, distinguished, remarkable, grand, considerable, powerful, much, mighty
Gross	improper, rude, coarse, indecent, crude, vulgar, outrageous, extreme, grievous, shameful, uncouth, obscene, low
Happy	pleased, contented, satisfied, delighted, elated, joyful, cheerful, ecstatic, jubilant, gay, tickled, gratified, glad, blissful, overjoyed
Hate	despise, loathe, detest, abhor, disfavor, dislike, disapprove, abominate
Have	hold, possess, own, contain, acquire, gain, maintain, believe, bear, beget, occupy, absorb, fill, enjoy
Help	aid, assist, support, encourage, back, wait on, attend, serve, relieve, succor, benefit, befriend, abet
Hide	— conceal, cover, mask, cloak, camouflage, screen, shroud, veil
Hurry	rush, run, speed, race, hasten, urge, accelerate, bustle
Hurt	damage, harm, injure, wound, distress, afflict, pain
Idea	thought, concept, conception, notion, understanding, opinion, plan, view, belief
Important	necessary, vital, critical, indispensable, valuable, essential, significant, primary, principal, considerable, famous, distinguished, notable, well-known
Interesting	fascinating, engaging, sharp, keen, bright, intelligent, animated, spirited, attractive, inviting, intriguing, provocative, thought-provoking, challenging, inspiring, involving, moving, titillating, tantalizing, exciting, entertaining, piquant, lively, racy, spicy, engrossing, absorbing, consuming, gripping, arresting, enthralling, spellbinding, curious, captivating, enchanting, bewitching, appealing

Keep	hold, retain, withhold, preserve, maintain, sustain, support
Kill	slay, execute, assassinate, murder, destroy, cancel, abolish
Lazy	indolent, slothful, idle, inactive, sluggish
Little	tiny, small, diminutive, shrimp, runt, miniature, puny, exiguous, dinky, cramped, limited, itsy-bitsy, microscopic, slight, petite, minute
Look	gaze, see, glance, watch, survey, study, seek, search for, peek, peep, glimpse, stare, contemplate, examine, gape, ogle, scrutinize, inspect, leer, behold, observe, view, witness, perceive, spy, sight, discover, notice, recognize, peer, eye, gawk, peruse, explore
Love	like, admire, esteem, fancy, care for, cherish, adore, treasure, worship, appreciate, savor
Make	create, originate, invent, beget, form, construct, design, fabricate, manufacture, produce, build, develop, do, effect, execute, compose, perform, accomplish, earn, gain, obtain, acquire, get
Mark	label, tag, price, ticket, impress, effect, trace, imprint, stamp, brand, sign, note, heed, notice, designate
Mischievous	prankish, playful, naughty, roguish, waggish, impish, sportive
Moody	temperamental, changeable, short-tempered, glum, morose, sullen, mopish, irritable, testy, peevish, fretful, spiteful, sulky, touchy
Neat	clean, orderly, tidy, trim, dapper, natty, smart, elegant, well-organized, super, desirable, spruce, shipshape, well-kept, shapely
New	fresh, unique, original, unusual, novel, modern, current, recent
Old	feeble, frail, ancient, weak, aged, used, worn, dilapidated, ragged, faded, broken-down, former, old-fashioned, outmoded, passe, veteran, mature, venerable, primitive, traditional, archaic, conventional, customary, stale, musty, obsolete, extinct
Part	portion, share, piece, allotment, section, fraction, fragment
Place	space, area, spot, plot, region, location, situation, position, residence, dwelling, set, site, station, status, state
Plan	plot, scheme, design, draw, map, diagram, procedure, arrangement, intention, device, contrivance, method, way, blueprint
Popular	well-liked, approved, accepted, favorite, celebrated, common, current
Predicament	quandary, dilemma, pickle, problem, plight, spot, scrape, jam
Put	— place, set, attach, establish, assign, keep, save, set aside, effect, achieve, do, build

Quiet	silent, still, soundless, mute, tranquil, peaceful, calm, restful
Right	correct, accurate, factual, true, good, just, honest, upright, lawful, moral, proper, suitable, apt, legal, fair
Run	race, speed, hurry, hasten, sprint, dash, rush, escape, elope, flee
Say/Tell	inform, notify, advise, relate, recount, narrate, explain, reveal, disclose, divulge, declare, command, order, bid, enlighten, instruct, insist, teach, train, direct, issue, remark, converse, speak, affirm, suppose, utter, negate, express, verbalize, voice, articulate, pronounce, deliver, convey, impart, assert, state, allege, mutter, mumble, whisper, sigh, exclaim, yell, sing, yelp, snarl, hiss, grunt, snort, roar, bellow, thunder, boom, scream, shriek, screech, squawk, whine, philosophize, stammer, stutter, lisp, drawl, jabber, protest, announce, swear, vow, content, assure, deny, dispute
Scared	afraid, frightened, alarmed, terrified, panicked, fearful, unnerved, insecure, timid, shy, skittish, jumpy, disquieted, worried, vexed, troubled, disturbed, horrified, terrorized, shocked, petrified, haunted, timorous, shrinking, tremulous, stupefied, paralyzed, stunned, apprehensive
Show	display, exhibit, present, note, point to, indicate, explain, reveal, prove, demonstrate, expose
Slow	unhurried, gradual, leisurely, late, behind, tedious, slack
Stop	— cease, halt, stay, pause, discontinue, conclude, end, finish, quit
Story	tale, myth, legend, fable, yarn, account, narrative, chronicle, epic, sage, anecdote, record, memoir
Strange	odd, peculiar, unusual, unfamiliar, uncommon, queer, weird, outlandish, curious, unique, exclusive, irregular
Take	hold, catch, seize, grasp, win, capture, acquire, pick, choose, select, prefer, remove, steal, lift, rob, engage, bewitch, purchase, buy, retract, recall, assume, occupy, consume
Tell	disclose, reveal, show, expose, uncover, relate, narrate, inform, advise, explain, divulge, declare, command, order, bid, recount, repeat
Think	judge, deem, assume, believe, consider, contemplate, reflect, mediate
Trouble —	distress, anguish, anxiety, worry, wretchedness, pain, danger, peril, disaster, grief, misfortune, difficulty, concern, pains, inconvenience, exertion, effort
Ugly	hideous, frightful, frightening, shocking, horrible, unpleasant, monstrous, terrifying, gross, grisly, ghastly, horrid, unsightly, plain, homely, evil, repulsive, repugnant, gruesome

Unhappy	miserable, uncomfortable, wretched, heart-broken, unfortunate, poor, downhearted, sorrowful, depressed, dejected, melancholy, glum, gloomy, dismal, discouraged, sad
Use	employ, utilize, exhaust, spend, expend, consume, exercise
Wrong	incorrect, inaccurate, mistaken, erroneous, improper, unsuitable

4. Current Affairs

SEPTEMBER 2023

1. National News

- India Smart Cities Conclave 2023 organized in Madhya Pradesh
- Union Minister Dharmendra Pradhan launches 'CRIIO 4 GOOD' modules
- India remains at 40th position in Global Innovation Index 2023
- RK Singh inaugurated 'India Energy Summit 2023' in New Delhi
- Inauguration of Marwar International Center in Jodhpur
- Uttarakhand launches India's first polythene waste bank for sustainable waste management
- Union Minister Hardeep S Puri flags off India's first green hydrogen fuel cell bus
- PM Modi flags off 9 new Vande Bharat trains
- Champawat and Pithoragarh districts included in the Swadesh Darshan 2.0 scheme to promote tourism
- Indian banker first to scale world's 8th highest peak this season
- ECI ropes in Chacha Chaudhary & Sabu to educate young voters
- Government Unveils AI Chatbot for PM-Kisan Scheme
- Parliament passes the Constitution (One Hundred and Twenty-eighth Amendment) Bill, 2023
- National Medical Commission achieved the prestigious WFME accreditation status for 10 years
- India's First Lighthouse Festival opens in Goa; spotlight on 75 historical sites to be developed as major Tourist Destinations.
- "Biswanath Ghat in Assam was honored as the Best Tourism Village of India in 2023 by the Ministry of Tourism, chosen from a pool of 791 applications from 31 States and UTs."
- Prime Minister Narendra Modi inaugurated the foundation stone of the International Cricket Stadium in Varanasi, his parliamentary constituency, marking a significant step towards promoting sports in the region.
- "Jal Shakti Minister Gajendra Singh Shekhawat announced that approximately 4.4 lakh Indian villages, accounting for 75%, have successfully attained the 'ODF Plus' status."
- Mukhyamantri Atmanirbhar Asom Scheme launched by the Chief Minister of Assam
- Dr. RML Hospital opens India's first dedicated OPD for Transgenders
- Union Minister launches 'Skills on Wheels' initiative
- President inaugurates first Uttar Pradesh International Trade Show

- The Prime Minister will inaugurate 16 Atal Awasiya Vidyalayas in Uttar Pradesh
- ICAR-CIBA launches Shrimp Crop Insurance Scheme with Chief Guest Parshottam Rupala
- Jammu and Kashmir's Udhampur railway station officially named 'Captain Tushar Mahajan Railway Station'
- Union Law Minister Arjun Ram Meghwal introduced the Women's Reservation Bill in Lok Sabha
- Hoysala Empire temples in Karnataka added to UNESCO list of World Heritage Sites
- S.R. Batliboi appointed as a Paytm auditor
- India's historic Santiniketan received World Heritage status by UNESCO
- PM Modi to launch PM Vishwakarma Scheme on Vishwakarma Jayanti in New Delhi
- Defense Minister Rajnath Singh approved 23 new Sainik Schools in partnership mode
- Uber partners with Indian Navy to offer Mobility Solutions
- Sarbananda Sonowal participated Eastern Economic Forum in Russia
- Jagdeep Dhankhar inaugurated International Conference on Dam Safety
- President Draupadi Murmu will inaugurate the Ayushman Bhava campaign
- India begins construction of world's highest combat airfield at Nyoma in Ladakh
- India will open embassy in Timor Leste
- World's tallest Nataraja statue installed at G20 summit venue (**27 ft tall statue**)
- 'Gujarat Declaration' outlining the outcome of the first WHO Traditional Medicine Global Summit 2023 released
- PM announces full capacity operation of India's largest domestically built 700 MW nuclear power plant at Kakrapar
- President unveiled the statue of Mahatma Gandhi and 'Gandhi Vatika' in New Delhi
- ASI to launch 'Adopt a Heritage 2.0' program on September 4, inviting corporate stakeholders to enhance monument amenities through CSR funds
- Union Minister Bhupender Yadav launches Chemotherapy Services in 30 ESIC Hospitals, inaugurates ESIC Control Room for improved resource monitoring.
- Union Minister Jyotiraditya Scindia inaugurates Utkela Airport in Odisha, boosting regional air connectivity and economic growth.
- Rashtriya Chemicals and Fertilizers (RCF) achieves Navratna status, signaling its pivotal role in India's economy and growth.

- Actor and comedian RS Shivaji, famous for his comedy passes away at 66 in Chennai
- Piyush Goyal unveils statue of RK Shanmugam Chetty in Coimbatore
- NCERT Granted Deemed University Status

2. International News

- The world's largest Hindu temple will be inaugurated on October 8 in New Jersey, America
- Singapore Overtakes Hong Kong as World's Freest Economy
- PM inaugurated 'International Lawyers' Conference 2023
- India Global Forum and World Governments Summit signed a Memorandum of Understanding (MoU)
- Apurva Chandra unveils 'People's G20' eBook on India's G20 Presidency
- India ranks first among 154 nations in grassroots crypto adoption
- Cabinet approves signing of an MoU between India and Armenia
- US & Vietnam sign deal on semiconductor supply chains
- India and Saudi Arabia sign Agreement on Cooperation in Energy Sector
- United States City Louisville Declares September 3rd as Sanatana Dharma Day
- WTO to have a fully functional dispute settlement system by 2024
- 'Bharat: Mother of Democracy' portal launched at G20 exhibition
- Switzerland ranked No. 1 in the World Best Countries Report 2023
- Union Minister Harsh Shanghvi grants Indian citizenship to 108 Pakistani migrants in Ahmedabad
- Parliament of Vanuatu elects Sato Kilman as the new Prime Minister
- African Union Becomes Permanent Member of G20 under India's Presidency
- First WHO Traditional Medicine Global Summit 2023 held in Gujarat
- Tharman Shanmugaratnam Wins Singapore Presidential Election
- Georgia officially declares October as 'Hindu Heritage Month'
- 43rd ASEAN Summit to begin in Jakarta on September 5
- The 2nd edition of Naval Commanders' Conference, 2023 begins in New Delhi
- China includes Arunachal Pradesh, Aksai Chin in its new 'standard map'

3. Business and Economics News

- RBI cancels Licence of Mumbai-based 'The Kapol Co-operative Bank'
- Axis Bank introduces "NEO for Business," a mobile-centric business banking platform designed to serve the needs of MSMEs, offering a

seamless integration of the bank's transaction banking products and industry expertise.

- SIDBI has partnered with DLAI to strengthen and promote India's fintech sector, fostering innovation and growth in digital lending and financial technology.
- ACKO unveils 'Platinum Health Plan'
- IREDA and Bank of Maharashtra partner to promote renewable energy adoption in India
- Indian Bank launches 'IB Sathi' initiative to promote financial inclusion services
- Yes Bank partnered with BriskPe to enable seamless cross-border payment
- HSBC India became the first foreign bank in India to launch 'ONDC in a Box'
- Bharti AXA Life introduces "Income Laabh" to simplify insurance
- BEL and Israel Aerospace Industries signed MoU
- RBI Governor rated 'A+' in Global Finance Central Banker Report 2023
- CCI approves merger of Vistara into Air India
- Bandhan Bank Authorized by RBI for Civil Pension Disbursement
- LIC Partners with Saraswat Cooperative Bank to Increase the life Insurance

4. Sports News

- Chhattisgarh bags three national awards for Ayushman Bharat
- India's Roshibina Devi Naorem wins silver medal in women's Wushu at Asian Games 2023
- India wins gold after 41 years in Horse Riding
- Aishwary Pratap Singh Tomar wins bronze in men's 10m air rifle
- Indian tennis player Leander Paes nominated for 2024 Tennis Hall of Fame
- India's Sift Kaur Samra gives India its 5th gold in the Asian Games 2023
- Italy's Marco Bezzecchi wins Indian MotoGP premiere
- India won a historic gold medal in the Equestrian Dressage Team event at the Hangzhou Asian Games
- Redfern became first woman to stand as an umpire
- ICC confirms venues of 2024 Men's T20 World Cup to be co-hosted by USA
- Antim Panghal wins bronze medal at World Championships
- Pakistan captain Babar Azam wins ICC Men's Player of Month Award for August
- PM Modi to lay foundation stone for Lord Shiva-themed Stadium in UP

- ICC releases Men's Cricket World Cup official anthem 'Dil Jashn Bole'
- BCCI signs SBI Life as 'Official Partner' for a three-year period
- Arlene Kelly won ICC Women's Player of the Month award for August 2023
- Elavenil Valarivan wins gold medal at ISSF World Cup 2023
- Cricket star Deepak Chahar launches 'DNINE Sports'
- Ferrari's Carlos Sainz wins 2023 Singapore Grand Prix
- IndiGo becomes official airline for Indian football team
- FIH withdraws Olympic qualifiers hosting rights from Pakistan
- Virat Kohli becomes fastest to reach 13000 ODI runs
- Prathamesh Jawkar wins silver in men's Archery World Cup
- Germany beat Serbia to win Basketball World Cup for first time
- Maharashtra Beats Karnataka to Win 5th National Wheelchair Rugby Championship
- Moeen Ali becomes third England spinner to take 100 ODI wickets
- Subroto Cup 2023: Bengaluru Joins Delhi and Gurugram as Host City
- Simona Halep Receives 4-Year Ban from Tennis for Doping
- Indian archer Prathamesh Jawkar wins silver medal in 2023 Archery World Cup debut
- India's Kiran George clinches Indonesia Badminton Masters title
- Praggnanandhaa secures third place in Tata Steel Chess India 2023 Open Blitz
- Novak Djokovic wins 24th Grand Slam title at US Open 2023
- Goa Governor launches the Mashaal (torch) for the 37th National Games
- Kerala to host the inaugural Zayed Charity Marathon in 2024
- Divya Deshmukh won the 2023 Tata Steel Chess India Women's Rapid Tournament
- India finished third with 14 medals at the ISSF World Championships 2023
- Mohun Bagan SG defeats East Bengal 1-0 at Durand Cup finals
- Former Zimbabwe cricket captain Heath Streak passes away at the age of 49
- Max Verstappen's historic 10th consecutive race win at the Italian Grand Prix 2023
- Parul breaks national record at World Athletics Championships
- India win inaugural Women's Asian Hockey 5s World Cup Qualifier, beat Thailand 7-2 in final

5. Defence News

- Indian Navy Chief R Hari Kumar participates in the 25th ISS in the US
- DAC gave its approval to the indigenous missile Dhruvastra

- Indian Coast Guard conducts coastal security drill 'Operation Sajag'
- Indian government approves defense acquisitions worth Rs 45,000 crore from domestic vendors
- ICG participates in 19th Heads of Asian Coast Guard Agencies Meeting
- Indian and French navies conclude Phase II of Varuna-23
- India's new warship Mahendragiri launched in Mumbai

6. Appointment-resignation

- Banmali Agarwal appointed as the new chairman of Tata Advanced Systems
- Amit Khare gets extension as advisor to PM Modi
- The Department of Personnel and Training appointed Amit Khare as advisor to Prime Minister Narendra Modi
- Sanjeev Mantri Appointed as MD and CEO of ICICI Lombard
- ICICI Lombard General Insurance's Managing Director and CEO, Bhargav Dasgupta, resigned after 14 years of service, and he has been appointed as Vice-President for market solutions at the Asian Development Bank (ADB) for a three-year term.
- Sashidhar Jagdishan reappointed as HDFC Bank MD and CEO
- Hrithik Roshan appointed brand ambassador of lubricants brand Mobil
- Former SBI Chief Rajnish Kumar appointed Chairman of Mastercard India
- Dhananjay Joshi appointed Chairman of DIPA
- Nihar Malviya appointed as permanent CEO of Penguin Random House
- Rahul Navin appointed as Director-in-charge of the Enforcement Directorate of India
- Srinivasan K Swamy elected as Chairman of Audit Bureau of Circulation
- Joshit Ranjan Sikidar takes over as Director (Finance) of SECI
- Sindhu Gangadharan appointed Vice-Chairperson of NASSCOM
- Haryana Govt Appoints Actress Mita Vashisth as Chair of Entertainment Policy Council
- Tata Steel approves TV Narendran's reappointment as MD & CEO
- RBI approves the reappointment of Sandeep Bakshi as MD & CEO of ICICI Bank
- Anushka Sharma appointed as Brand Endorser by "W"
- Neeraj Mittal appointed as Secretary, Department of Telecommunications (DoT)
- Rajesh Nambiar appointed as the new chairperson of NASSCOM
- Shyam Sunder Gupta Takes Charge as Central Railway's Principal Chief Operations Manager
- Shri Vumlunmang Vualnam takes charge as Secretary of MoCA
- R Madhavan appointed as Chairman of FTII Pune

- Uday Kotak resigns as CEO of Kotak Mahindra Bank
- Dr. Vasudha Gupta takes charge as Principal Director General of Akashvani and News Services Division
- Indian-origin economist Tharman Shanmugaratnam elected as Singapore's President
- Actor R. Madhavan appointed as President of FTII Society and Chairperson of the Governing Council, succeeding Shekhar Kapur
- Former CJI Raman appointed as a member of the Singapore International Mediator Panel
- Jaya Verma Sinha becomes first woman to lead Indian Railways as Chairman and CEO
- MS Dhoni Appointed as the Brand Ambassador of Swaraj Tractors
- Vumlunmang Vualnam assumes the role of Secretary, Ministry of Civil Aviation, Government of India
- Geetika Srivastava becomes India's First Woman Charge d'Affaires In Pakistan

7. Awards

- Actress Waheeda Rehman selected for Dadasaheb Phalke Lifetime Achievement Award 2021
- Swati Nayak selected for the 2023 Borlaug Field Award
- Fashion designer Rahul Mishra honored with France's "Chevalier de l'Ordre des Arts et des Lettres" award
- RITES Limited awarded with Safety Innovation Award 2023
- Najma Akhtar honored with lifetime achievement award in academia
- Army doctor awarded Dr AM Gokhale award for ophthalmology in Pune
- 12 scientists selected for the Shanti Swarup Bhatnagar Award for 2022
- Adeeb Ahamed wins Leading Fintech Personality of the Year Award
- Indian-American physician Dr. Siddhartha Mukherjee nominated for the Baillie Gifford Prize for non-fiction in London
- Professor Satyajit Majumdar of TISS receives Dr. VG Patel Memorial Award 2023
- Praveena Anjana of Udaipur won the title of Miss International India 2023
- National Teacher Award 2023 awarded to outstanding teachers by the President of India
- Kashmir to Host Miss World 2023 in December

8. Obituaries

- M S Swaminathan, father of India's Green Revolution, passes away at the age of 98
- Writer and filmmaker Geeta Mehta passes away at the age of 80

- Renowned political cartoonist Ajit Ninan passes away
- Dennis Austin, co-creator of Microsoft PowerPoint, dies at 76
- Hindustani classical singer Malini Rajurkar passed away at the age of 82
- ISRO condoles the death of Valarmathi, the famous voice behind the Chandrayaan-3 countdown

9. Science and Technology

- World's oldest wooden structure discovered in Zambia
- SencoGold launches India's 1st virtual jewellery showroom on Metaverse
- 1,000-year-old alien corpse unveiled in Mexican Congress
- Amazon Web Services ties up with ISRO to advance its AI capabilities
- DBS Bank unveils metaverse adventure on 'DBS Better World'
- New genus and species Igai Semkhu of titanosaurian dinosaur discovered in Egypt
- Japan's 'Moon Sniper' Lander SLIM Launched Successfully, Aims to Land on the Moon Next Year
- ISRO's Aditya L1 Solar Mission Successfully Completes Second Earth Orbit Maneuver
- India unveils the world's first AI-powered anti-drone system – Indrajal by Grene Robotics
- ISRO's Aditya L1 solar mission achieves successful first orbit raising maneuver, en route to studying Solar corona and solar wind at L1 point.
- Hyderabad gets India's first solar roof cycling track
- India to host the first edition of the 'Global India AI 2023' conference in October

10. Important-days

- World Tourism Day - 27 September
- International Sign Language Day - 23 September
- The World Day of the Deaf, dedicated to the global deaf community, is observed on the last Sunday of September, with the theme for 2023 being "Ear and Hearing Care for All".
- Weekly Current Affairs (18 September to 23 September 2023)
- World Alzheimer's Day 2023: 21 September
- World Rhino Day - 22 September
- International Day of Peace - 21 September
- International Red Panda Day - 16 September (third Saturday of September)
- World Ozone Day - 16 September
- World Suicide Prevention Day: 10 September
- World Physiotherapy Day - 8 September

- International Literacy Day 2023: 8 September
- Government of India launches Literacy Week to promote gaiety
- International Day of Charity is observed on 5 September

11. State News

- Uttar Pradesh received two awards for its excellent performance in Ayushman Bharat Scheme
- Haryana Government ban on 'Hookah bars' in state
- Jammu and Kashmir's first Tata Memorial Cancer Care Center inaugurated in Kathua
- Veerangana Durgavati Tiger Reserve becomes the 7th tiger reserve of Madhya Pradesh and 55th in India
- 'India Smart Cities Conclave 2023' organized in Madhya Pradesh
- Pramila Malik becomes the first woman Speaker of Odisha Assembly
- The Food Safety and Standards Authority of India (FSSAI) has officially designated Mithun, a semi-domesticated bovine animal, as a food animal, providing a boost to its meat consumption.
- Madhya Pradesh has officially designated the "Veerangana Durgavati Tiger Reserve" as its seventh tiger sanctuary, contributing to the 54 tiger reserves in India.
- Goa Chief Minister Pramod Sawant launches Grih Aadhaar Scheme and Chavath-e-Bazaar
- Last diesel-run double-decker bus of Mumbai retires
- Andhra Pradesh's 'Atreyapuram Putharekula' receives coveted Geographical Indication (GI) tag for traditional sweet
- Arunachal Pradesh Chief Minister announces 'Mukhyamantri Shramik Kalyan Yojana'
- Madhya Pradesh government unveils 108-foot statue of Adi Shankaracharya in Omkareshwar
- Gujarat passes bill reserving 27% local body seats for OBCs
- Assam Governor unveils 'Sarpanch Samvaad' mobile app
- Patna Municipal Corporation starts a Cash for Waste scheme
- Uttarakhand govt approved state's first service sector policy
- Odisha Chief Minister Naveen Patnaik launched 'Mukhyamantri Sampurna Pushti Yojana' in the state
- Odisha govt approves nine industrial projects worth over Rs 1 lakh cr
- Social welfare scheme Kalaignar Magalir Urimai Thogai Thittam to be launched by Tamil Nadu Government
- Social welfare scheme "Kalaignar Magalir Urimai Thogai Thittam" to be launched by Tamil Nadu Government
- MP cabinet approves Mob Lynching Victim Compensation Scheme 2023

- Jharkhand Cabinet Approves Pension and OBC Status for the Transgender Community
 - Maharashtra State to set up a mango board in Konkan
 - WB assembly passes resolution to observe April 15 as Bengal Day
 - Odisha's Koraput Kalajeera rice gets GI tag status
 - Tamil Nadu's Salem Sago gets GI tag
 - Country's first solar city inaugurated in Sanchi of MP
 - Launch of Mukhya Mantri SABAL Yojana in Himachal Pradesh Launched
 - M.K. Stalin launches expansion of breakfast scheme
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5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING FOR HJS, PCS (J) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair. Subjects;-

1.General Knowledge	2.Law
<ol style="list-style-type: none">1. Current Affairs2. G.K.MCQs3. History of India and Indian Culture4. Geography of India5. Indian Polity6. Current National Issues7. Topic of Social Relevance with special reference to newly added 9 Social Acts8. India and the World9. Indian Economy10.International Affairs and Institutions11. Development in the field of:<ol style="list-style-type: none">(a) Science and Technology(b) Communications and Space	<ol style="list-style-type: none">1. Constitutional Law2. Law of Evidence3. Criminal Procedure Code4. Code of Civil Procedure,5. Indian Panel Code6. Law of Contract7. Partnership Act8. Easements Act9. Law of Torts10. Transfer of Property Act11. Principles of Equity ,12. Law of Trust13. Specific Relief Act14. Hindu Law15. Muslim Law16. U.P. Revenue Code.17. U.P. Municipalities Act 191618. U.P. Panchayat Raj Act 194719. U.P. Consolidation of Holdings Act, 195320. U.P. Urban (Planning and Development) Act, 1973
3.CLAT <ol style="list-style-type: none">1. General Knowledge2. A Guide for CLAT	

6. About Coaching

V.S. Dream coaching is one of the premiere law institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept. 2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

7. About Director and faculty

Ms. Anshu Singh B.A., LL.B is the director of the coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

- 1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself**
- 2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the**

University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad -Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government- Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) - Guest Speakers
4. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

9. Library with Research wing

V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book, brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge..

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.



Library



Research wing